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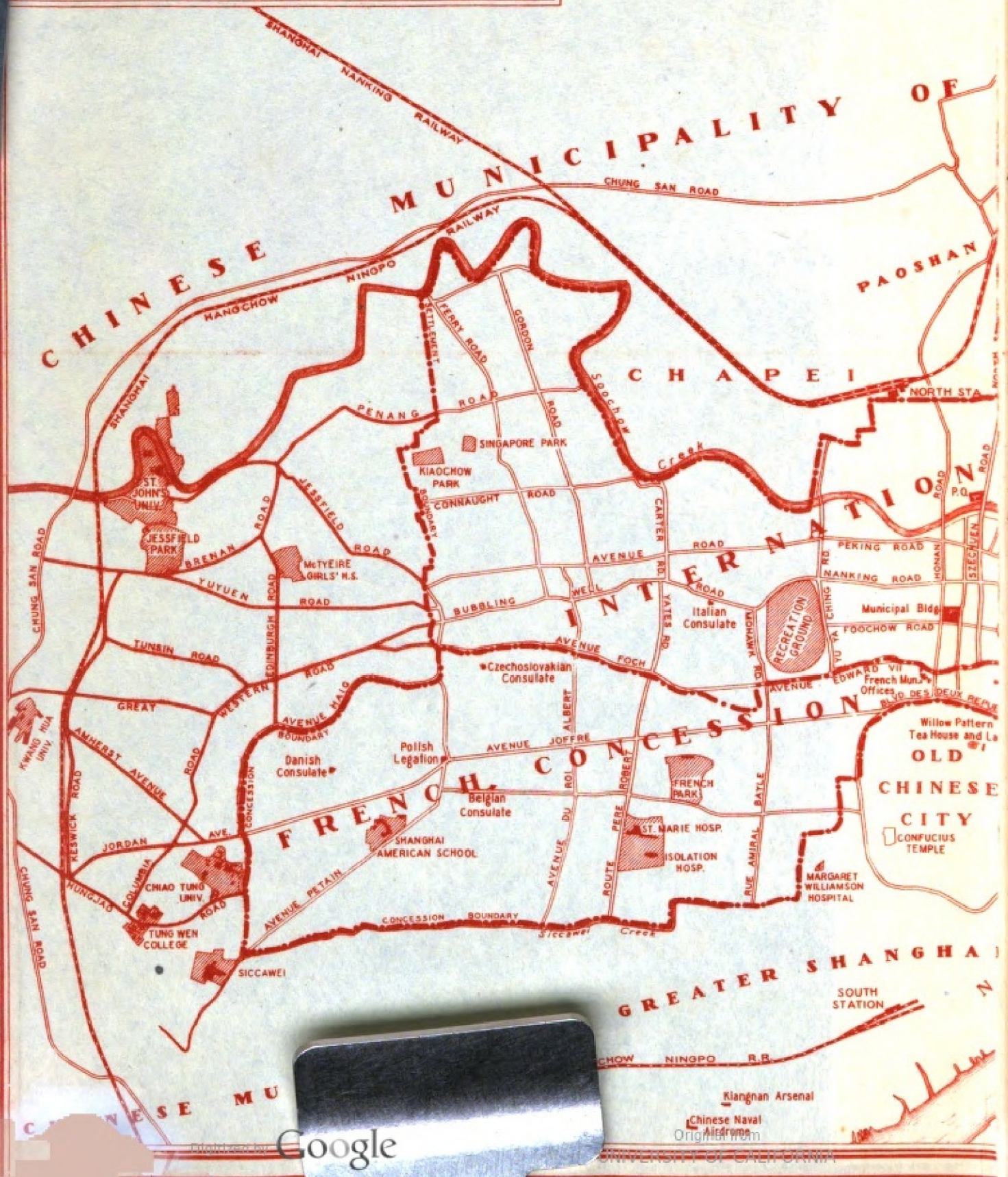


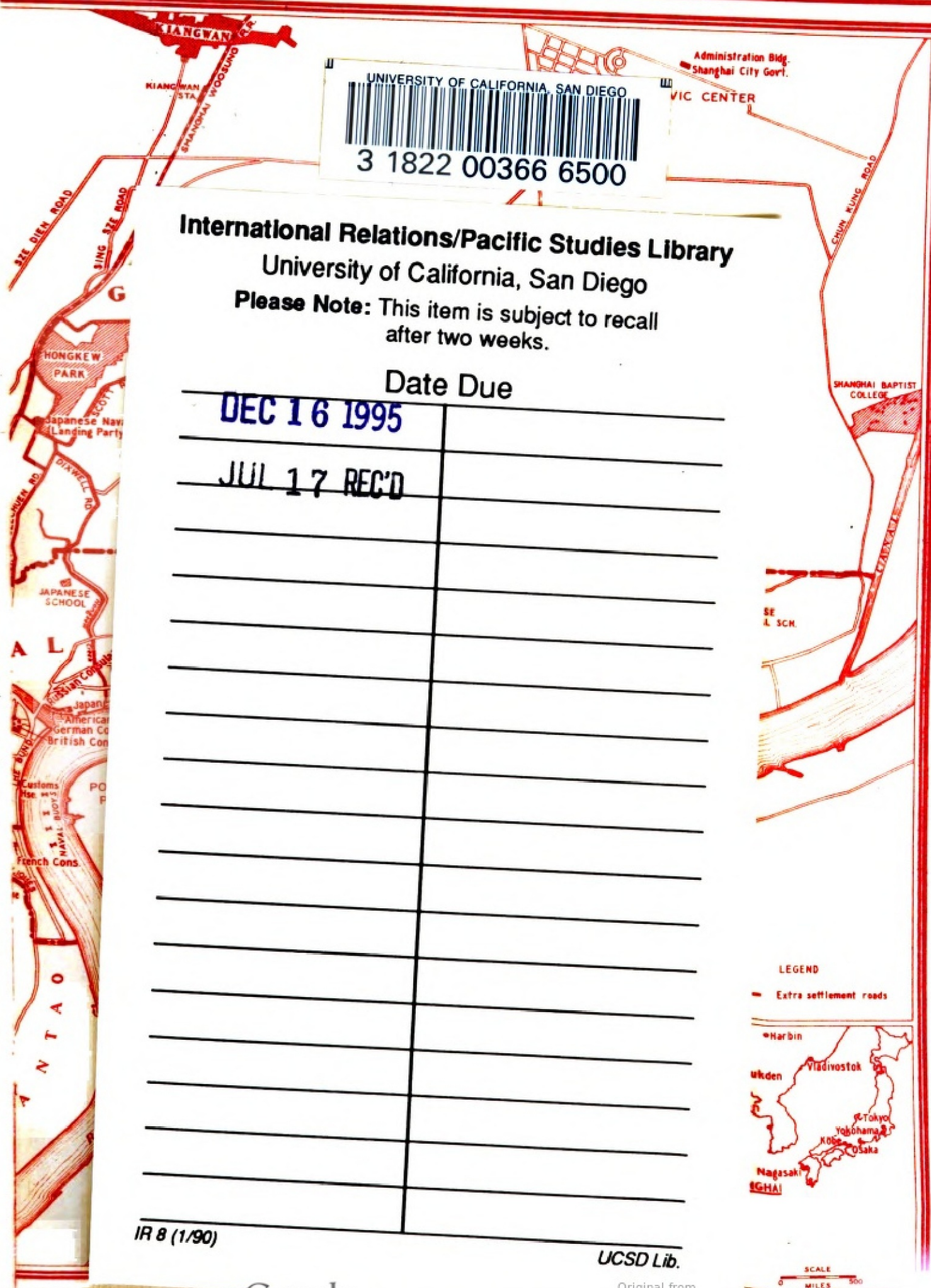
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# **THE SHANGHAI PROBLEM**

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# The Shanghai Problem

By

**WILLIAM CRANE JOHNSTONE, JR.**

**Associate Professor of Political Science  
The George Washington University**



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**To A. H. J.**



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## PREFACE

**"S**HANGHAI is not China." These are the words which greet the inquiring tourist who visits the metropolis on the Whangpoo. True, for the Sinologue, Shanghai is not the China of the Middle Kingdom, the China of temples and tombs and of Confucian classics and rare works of art. Yet for the student of Chinese politics and of Sino-foreign relations Shanghai is economically and politically a most vital part of China, the China of "gunboat diplomacy" and foreign privileges, the Westernized China of today.

In this city three separate municipalities have developed and still exist, each possessing its own government and each exercising exclusive jurisdiction within its boundaries. The International Settlement and the French Concession are foreign-controlled areas, while the Municipality of Greater Shanghai is under the control of the Chinese. Many studies might be made of this city and its problems. To the student of municipal administration the three types of city government offer interesting comparisons. A sociologist would find Shanghai a unique laboratory for the investigation of race relations. The outstanding importance of Shanghai in the commercial and financial life of China and the control exercised in the city by the business interests are worth the attention of several economists.

This book aims to dig beneath the surface in but one direction and to indicate, through tracing the history of

the three municipalities in Shanghai and through summarizing the most important international problems produced by their development, the importance of the Shanghai problem in any consideration of Sino-foreign relations.

The study is divided into two parts. Part One treats of the historical development of the three municipalities, their government, and their administration of justice. This approach permits emphasis to be placed on their legal bases. Since the International Settlement is by far the most important of the three areas, its development and present position have been given greatest attention.

Part Two is concerned with problems which have had more than local significance, which are primarily international in character, and which collectively comprise "the Shanghai problem." The Sino-Japanese hostilities of 1932 are dealt with in a separate chapter, as it is believed these events constitute a turning point in the history of Shanghai and in the development of the foreign areas. The problem of rendition of the foreign areas is examined and the factors which may affect a solution of the Shanghai problem are discussed.

The author is indebted to Professor Graham H. Stuart of Stanford University for the many helpful suggestions which led to this investigation and to the completion of the manuscript, and to the many other persons who gave freely of their time and assistance in enabling the author to obtain valuable information in China and in this country. For all opinions and interpretations of fact the author is alone responsible.

W. C. J.

WASHINGTON, D.C.

October 12, 1936

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PART ONE

**The History of the Three Municipalities  
at Shanghai**



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## CHAPTER I

### THE OPENING OF SHANGHAI

**T**HERE are three cities in Shanghai—the International Settlement, the French Concession, and the Chinese city—each having its own government and exercising exclusive administration within its boundaries. Over three million people inhabit the urban area of these three cities, where less than eighty years ago there was only a Chinese walled town on the muddy banks of the Whangpoo River.

The story of Shanghai's three cities, their growth, and their problems is found in the story of the expanding China trade of the last half of the nineteenth century. The demands of foreign traders that a vast territory with a dense population should not remain closed to the goods of the industrialized West led to the opening of Shanghai and numerous other ports in China. The growth of Shanghai and its attainment to the position of first city in China has been due principally to its geographic position as a port of entry to the great valley of the Yangtze, where almost half of China's millions live, and to the establishment of the two foreign settlements as islands of safety and stability in a land torn by civil war and foreign invasion.

#### EARLY FOREIGN TRADE WITH CHINA

For over a century prior to the opening of Shanghai, Canton had been the chief center of maritime trade with

China. Although other ports had been opened by imperial decree as early as 1685, the exactions of the local officials and the attitude of the Manchu government had in practice restricted the foreigners to Canton and to the Portuguese center of Macau. The Manchu emperors regarded all foreigners as barbarians, expected tribute as from vassal states, and discouraged the introduction of foreign goods into a celestial kingdom which they considered self-sufficient.

The situation at Canton, however, was far from satisfactory to the foreign merchants, who, making profits under great difficulties, had visions of greater profits if restrictions were removed. The trade at Canton was peculiar in that it had developed under a system of monopolies. On the one side was a small group of Chinese merchants, banded together in the *Co-hong*, who acted as the agents of all foreigners and reaped the profits of the middleman. On the other side was the English East India Company, controlling all British trade and dominating to a large degree the policies of the other foreign traders. The Company was able to deal with the *Co-hong* in presenting the demands of all foreigners, while the Chinese were able to hold the Company responsible for the actions of British traders and through the Company to bring pressure to bear on those of non-British nationality. Under this system trade flourished; but so did friction, for the restrictions of the Chinese grew daily more irksome to the British, the Americans, and others, who were confined to a narrow strip of land at Canton without their families and with little opportunity to explore the hinterland.

These restrictions varied from day to day. Tariffs on goods were changed without notice, and the corruption of Chinese officials was an accepted fact. The Chinese attempted to keep the foreigners under their jurisdiction and to impose on them the doctrine of official responsibility, a principle long accepted in China but discarded by the West. No foreign sea captain wished to suffer at Chinese hands for the acts of members of his crew, nor did foreign merchants wish to be held responsible for every action of their employees. Attempts to enforce this doctrine were particularly annoying and were eventually a factor in the final break-up of the *Co-hong* system.

As if this were not enough, the character of the trade also served to promote conflict. The principal Chinese exports were tea and silk, and these were paid for chiefly by imports of silver. Toward the close of the eighteenth century, however, the difficulty of obtaining silver or other commodities desired by the Chinese led to the gradual introduction of opium as a medium of exchange for the teas and silks so much in demand by the West. Opium as a commodity had the virtue of small bulk and high value, but its consumption was an evil to which the Chinese had grave objections. Its importation was forbidden by edict in 1800, but the corruption of the Chinese officials and the unscrupulousness of foreigners prevented enforcement. Opium smuggling became a lucrative business and the illegal importation of the drug was greatly accelerated.

By the second quarter of the nineteenth century Sino-foreign trade relations had reached an acute stage. The open break which came was due principally to two events.

In 1833 the monopoly of the East India Company was abolished. This destroyed the one central authority the Chinese could deal with, and at the same time the foreigners began to protest more energetically the lack of fixed tariffs, the corruption of officials, and the growing restrictions upon their trade. The second event was the attempt of Chinese Commissioner Lin, at Canton, to enforce drastically the prohibition on the importation of opium. This action seriously disrupted trade and caused the British to resort to force in order to place their relations with China on a treaty basis.<sup>1</sup>

Each side in the controversy had a case. The Chinese objected principally to the importation and later to the smuggling of opium, and in general saw no reason why they should open their country to the commercial invasion of the "barbarians." The desire of Chinese merchants at Canton for profit, however, led their government into a situation whereby China was forced to bow before the gunboat diplomacy of the West. The foreigners, on the other hand, seeking teas and silks and markets with which to nourish their growing industrial economies, attempted to force the Chinese to accept their standards and the principle of individual freedom. They, too, desired profits, and led their governments to the point of an open break with this ancient empire, insisting on the use of force to open a new region to business exploitation.

<sup>1</sup> For a more detailed description of pre-treaty trade with China see: Tyler Dennett, *Americans in Eastern Asia* (New York, 1922); F. R. Dulles, *The Old China Trade* (New York, 1930); H. B. Morse, *International Relations of the Chinese Empire* (New York, 1910), 3 vols.; and *The Trade and Administration of China* (London, 1921).

THE TREATY BASIS OF THE FOREIGN SETTLEMENTS

After considerable hesitancy and some vacillation the British finally decided to break the trade deadlock and force the Manchu government to come to treaty terms through negotiations by accredited representatives. On June 19, 1842, British troops occupied the walled town of Shanghai located on the Whangpoo River fourteen miles above the point where it joins the Yangtze.<sup>2</sup> British war-ships had previously bombarded Amoy and Ningpo and were on their way to Nanking, where Sir Henry Pottinger was to meet an official designated by the Emperor to sign a treaty. August 14 found the British forces before Nanking, where threats of bombardment were sufficient to prevent resistance by the Chinese. Fifteen days later, on board H.M.S. "Cornwallis," the Treaty of Nanking was signed, the first of a long series of treaties defining foreign rights and privileges in China.

The peculiar position of the foreign settlements at Shanghai can be traced directly to these first treaties negotiated by the governments of Great Britain, France, and the United States with China between 1842 and 1844. Subsequent treaties added to the privileges of foreigners in China, and recent treaties<sup>3</sup> have taken away some of these privileges, but the basis for foreign concessions and settlements in China is still found in the treaties mentioned, which declared the five ports of Amoy, Canton, Foochow, Ningpo, and Shanghai open to foreign residence and trade.

<sup>2</sup> H. B. Morse, *International Relations of the Chinese Empire*, "The Period of Conflict—1834–1860," p. 295.

<sup>3</sup> That is, the tariff autonomy treaties, 1928–1930.

With respect to the right of foreigners to live and carry on trade in these five open ports, the three treaties are quite similar. The British Treaty of Nanking states:

His Majesty the Emperor of China agrees, that British subjects, with their families and establishments, shall be allowed to reside, for the purpose of carrying on their mercantile pursuits, without molestation or restraint, at the cities and towns of Canton, Amoy, Fuchau-fu, Ningpo and Shanghai; and Her Majesty the Queen of Great Britain, etc., will appoint Superintendents or Consular Officers, to reside at each of the above-named cities or towns, to be the medium of communication between the Chinese authorities and the said merchants and to see that the just duties and other dues of the Chinese government, as hereafter provided for, are duly discharged by Her Britannic Majesty's subjects.<sup>4</sup>

The American treaty, signed July 3, 1844, provides for the residence of American citizens in the five ports and for the selection, "in concert" with the local Chinese authorities, of the sites for residences, business houses, churches, and hospitals.<sup>5</sup> In addition the American treaty provided for the exercise of extraterritoriality by American citizens, a right which, by the action of the most-favored-nation clause, also accrued to Great Britain, France, and other powers later negotiating treaties with China.<sup>6</sup> The American treaty also contained a provision that the Chinese government should defend the citizens of the United

<sup>4</sup> Text in G. E. B. Hertslet, *China Treaties* (London, 1908), Vol. I, p. 7.

<sup>5</sup> Text in W. M. Malloy, *U.S. Treaties in Force 1776-1909* (Washington, 1910), Vol. I, p. 196.

<sup>6</sup> Extraterritorial rights of a sort had been granted the British in the Supplementary Treaty of the Bogue, 1843. The provisions of the American treaty were more extensive.

States "from all insult or injury of any sort on the part of the Chinese."<sup>7</sup> The French Treaty of Whampoa, signed October 24, 1844, followed closely that of the United States and provided additional rights for Catholic missionaries.<sup>8</sup>

The primary purpose of these treaties was to establish relations between China and the governments concerned on a practical, Occidental basis. The foreigners naturally took advantage of their superior force to gain unequal privileges on the theory that the Chinese nation was backward and that Chinese laws should not apply to themselves. Among their provisions the treaties included: commercial regulations; the establishment of a fixed tariff on imports to China; freedom for foreigners from the civil and criminal jurisdiction of the Chinese government; and the right of merchants and missionaries to carry on their trade in the five open ports where they could rent land and build houses and churches. The treaties imposed the obligation on the Chinese government of protecting foreign lives and property. When the Chinese were unable and unwilling to carry out this obligation, their failure was made the excuse for gaining additional privileges. Finally, when the foreigners with specious legal reasoning and broad implications added to their rights and privileges by creating foreign municipalities on Chinese soil, a thing not contemplated in the treaties, the Chinese government was too weak to do more than protest.

<sup>7</sup> United States Treaty, Article IV.

<sup>8</sup> Text in Hertslet, *op. cit.*, Vol. I, p. 258.

In short, these three treaties merely contemplated the residence of foreigners of British, American, and French nationality in the five open ports. They granted these residents certain privileges and established a system of commercial regulations in order that the defects of the old Canton trade might be remedied. Since no one could prophesy how these ports would develop, it cannot be asserted that the establishment of foreign municipalities, free from Chinese jurisdiction, populated by both Chinese and foreigners, was contemplated by these first treaties. The foreign settlements in the treaty ports "just grew," nurtured by the philosophy of expediency and cultivated by the profits of business.

This growth followed certain patterns and assumed certain characteristics. In Shanghai the pattern and the characteristics were unique. The reasons for this unusual growth will soon become apparent as the history of the Shanghai settlements is examined.

#### SHANGHAI OPENED TO TRADE

(In November 1843 Captain George Balfour, late of Her Majesty's forces in India, arrived in Shanghai and as British Consul declared the port open to trade in accordance with the terms of the Treaty of Nanking.) The Shanghai of 1843 appeared to those who gazed from the deck of the British merchantman anchored in the Whangpoo as a walled town almost surrounded by the tall masts of hundreds of junks.

As a center for commerce this walled town possessed an ancient and honorable history. There appears to be a record of a small market town here as early as A.D. 960

during the Sung Dynasty.<sup>9</sup> It was known under various names as "Hua-ting-hai," "Hai-shing," and "Shanghai-chin." Because of its fine location, situated at the confluence of Soochow Creek (sometimes called Wu-sung-kiang) and the Whangpoo River, close to the great artery of the Yangtze, it had gradually developed as a transshipping point for river and canal traffic. Four hundred years later, in the Ming period, it had become a subprefecture or city of the third rank. It was at this time that the walls were built to keep the town free from the ravages of Japanese pirates who infested the mouth of the Yangtze and had attacked even the first Ming capital, Nanking.

Shanghai (once spelled "Shanghae") was known to foreign travelers in the eighteenth century, but most accounts on record are those of visitors in the early nineteenth century. Charles Gutzlaff paid visits to Shanghai in 1831 and 1832 and reported the Chinese there eager for foreign trade.<sup>10</sup> In 1835 W. H. Medhurst, who was later to have a considerable part in the development of the settlements, visited the city and reported as follows:

On the ninth of October we started in the long boat for Shanghae; which as a city of the third rank, is one of the greatest emporiums of commerce on the east coast of China. It communicates immediately with the rich districts of Soo-chow and Hang-chow, receiving rich brocades from the Arcadia of China and conveying hither the inventions and commodities of the western world. The

<sup>9</sup> See G. Lanning and S. Couling, *The History of Shanghai* (Shanghai, 1909), chapter xxix; Charles B. Maybon and Jean Fredet, *Histoire de la concession française de Changhai* (Paris, 1929), p. vi; C. A. Montalto de Jesus, *Historic Shanghai* (Shanghai, 1909).

<sup>10</sup> C. F. A. Gutzlaff, *Journal of Three Voyages Along the Coast of China* (London, 1834), pp. 242 ff.

trade of this place is equal if not superior to that of Canton, and the appointment to district magistrate or superintendent of customs at Shanghai is considered exceedingly lucrative and highly important.<sup>11</sup>

Although only one foreign merchant was ready to do business in November 1843, Captain Balfour, in expectation of the future, made a preliminary agreement with the Taotai<sup>12</sup> concerning the limits of the port, anchorage for ships, and arrangements for collecting the customs duties.<sup>13</sup> The captain's expectations were soon fulfilled, and by the end of the first year eleven foreign merchants and their families had taken up permanent residence. With this growth it seemed reasonable to expect that Shanghai would develop into an important center of trade, and both the Taotai and Captain Balfour felt the necessity of making arrangements for foreign residents.

#### THE LAND REGULATIONS OF 1845

It has been stated that Sir Henry Pottinger roughly sketched the limits of a future British concession in

<sup>11</sup> W. H. Medhurst, *China, Its State and Prospects* (London, 1842), pp. 460 ff.

<sup>12</sup> A note in the *Chinese Repository* (Canton, 1847), XVI, 543-44, reads: "*Taotai*, also spelled *Taotae*. The full title of this officer runs, 'By Imperial authority Superintendent of the Maritime Customs in Kiangsu and joint director of the military in the departments of Suchau [Soochow], Sunkiang, and Taitsang.' The office of Taotai or Superintendent, though the highest in Shanghai and having the most to do with foreigners does not properly form a part of the local magistracy, but belongs rather to the provincial government, the headquarters of which are at Suchau [Soochow] and is designed to exercise a general surveillance over the local magistracy."

<sup>13</sup> Text in Great Britain, *Accounts and Papers, 1844*, Vol. XXX, Correspondence with China, p. 398.

Shanghai when he stopped there on his return from negotiating the Treaty of Nanking.<sup>14</sup> This would seem to lend weight to the actions of Captain Balfour, who apparently had in mind the creation of an exclusive British concession or settlement where other foreigners might live if they chose to place themselves under local British regulations.<sup>15</sup> The attitude of the local Chinese officials, particularly that of Kung Mow-Kou, the Taotai, was to set apart a site close outside the walls of the Chinese city where foreigners would be under some control, simulating the old procedure at Canton.<sup>16</sup> The Taotai was interested in keeping Chinese graves free from molestation, in maintaining Chinese customs, and in restricting the activities of foreigners as much as possible. The British Consul, on the other hand, was interested in promoting trade, in the proper collection of the customs duties, and in protecting the interests of British merchants. In an effort to protect their respective interests, the Taotai and the Consul issued, in 1845, a set of Land Regulations for the guidance of British residents in the port.<sup>17</sup>

These regulations did not constitute an attempt to establish a municipal system, but were mainly a set of rules based on principles agreed upon by Balfour and the Taotai over a period of two years. In fact it is quite likely that the Taotai had as much to do with their drafting as the Consul, as may be seen by their informal nature and the

<sup>14</sup> Alexander Michie, *The Englishman in China* (Edinburgh, 1908), I, 125.

<sup>15</sup> Montalto de Jesus, *op. cit.*, pp. 33-38.

<sup>16</sup> *Ibid.*

<sup>17</sup> Text of 1845 Land Regulations in Great Britain, *Accounts and Papers, 1847*, Vol. XL, p. 83, and *United States House Executive Documents, 1853-54*, Vol. 16, No. 123, pp. 217 ff.

fact that they were first proclaimed and published in the Chinese city by the Taotai and then sent to the Consul for publication in English. The official copy is a translation from the Chinese and is signed only by W. H. Medhurst, interpreter at the British Consulate.

There were twenty-three regulations in all: these defined the boundaries of the area in which British nationals might live, established methods and procedure for renting land, regulated the payment of the annual land tax to the Chinese government, provided for the construction and upkeep of roads, and laid down rules respecting sanitation and buildings. The purpose of these rules was to provide a safe and healthful place for British merchants to live and do business. Questions of jurisdiction, of municipal organization, and of the right of exclusive concessions had not yet appeared. Two of the Land Regulations of 1845 are important, however, because of their influence on subsequent codes. Regulation XIV required that foreigners other than British should apply to the British Consul before they could rent land within the limits of the Settlement. Regulation XX placed the supervision of assessments for construction of roads and maintenance of wharves and jetties in the hands of "three upright merchants" to be appointed by the Consul on request of the contributors. The first of these regulations precipitated a conflict over the right of the British to establish an exclusive concession, and led eventually to the formation of the International Settlement. The second regulation established the precedent of a governing body composed of local merchants, and laid the basis for the formation of the Municipal Council.

The Land Regulations of 1845 applied only to British residents and were soon outmoded as the character of the population changed and as American, French, and other nationalities sought to profit by the Shanghai trade. For the next fifteen years British, French, and Americans struggled over the question of exclusive concessions, and the outcome of this struggle determined the nature of the foreign settlements. The code of 1845 set aside an area for the residence of British merchants and their families, delimited by the Consul and the Taotai "in communication together" under the terms of the Treaty of Nanking. It made possible the renting of land "north of the Yang-king-pang and south of Le-kea-chang" (Soochow Creek) by British nationals; but it also provided that all foreigners wishing to reside in this area must have their deeds registered through the British Consulate. This in effect established an exclusive British area under the control of the British Consul, who interpreted the Treaty of Nanking as giving the British an exclusive right of control over the settlement which extended along the river north of the walled town and opposite the best anchorage for ships.

The British, however, were not alone in obtaining the privilege of residence in the open ports of China, the same privilege having been granted to Americans in the Treaty of Wanghia and to the French in the Treaty of Whampoa. The American and French merchants who soon began arriving in Shanghai had three courses of action open to them. They could accept the British interpretation of the treaties and take up residence in the British area, thus submitting themselves to the British regulations. This a few of them did, as the British had chosen the most desirable

location. Or they could protest the exercise of exclusive control over any area by the government of one nation. This was the course taken by some of the Americans, supported by their consular authorities. Or, again, they could follow the British example and attempt to secure a separate and exclusive area. This last was the course adopted by the French. Thus the Americans and the French chose diverse courses of action, the ultimate results of which have affected the whole future of Shanghai's development and hence must be examined in some detail.

---

## CHAPTER II

### THE STRUGGLE FOR EXCLUSIVE CONCESSIONS

**T**HE FIRST American merchant in Shanghai was Mr. Henry G. Wolcott, agent for Russell and Company, an old Canton trading firm. Mr. Wolcott rented land within the British area and had his title deeds recorded through the British Consul and the Taotai. In 1845, after about a year of residence, he paid a visit to Canton and obtained a commission as Acting United States Consul for Shanghai from the Acting American Commissioner for China, Commodore Biddle. On his return the patriotic Mr. Wolcott raised the American flag in front of his residence in the British Settlement and showed considerable reluctance to accept the port regulations announced by Balfour in 1843. Consul Balfour protested the flag-flying to Wolcott and the Taotai, but to no avail. In June 1846 Commodore Biddle stopped in Shanghai on his way to Japan and conferred with Wolcott. He is said to have advised Wolcott to accept the port regulations but not to pull down his flag, but Wolcott, anxious to serve both his company and his country by avoiding friction, gave way on both counts.<sup>1</sup>

<sup>1</sup> A complete documentary record of this Anglo-American controversy is to be found in the correspondence of United States Commissioner Humphrey Marshall published in *United States House Executive Documents*, 1853-54, Vol. 16, No. 123. This record has been checked with the British correspondence. Unless otherwise noted, references are to the Marshall correspondence.

## AMERICAN OBJECTION TO EXCLUSIVE CONCESSIONS

The next month the Taotai offered a section of land to the American Consul for the exclusive use of his nationals, but the location was not desirable and the Consul waived the offer for the time being but reserved the right to take it up at some future date.<sup>2</sup> In February 1848 trouble again occurred over the insistence of an American ship captain on his right to fire a morning and evening gun. The British Consul declared this contrary to the port regulations and called upon the Taotai to forbid it, but by this time the American colony had increased and its members rallied to the defense of their rights, declaring that they would be bound only by rules approved by the United States government. Both the British and American consuls appealed to their respective superiors in Hong Kong and Canton, and although the British protest was not sustained by the British Minister the local controversy remained unsettled.

Toward the end of 1848 Mr. J. Alsop Griswold, also of Russell and Company, became the first regularly appointed United States Consul. He flew the American flag in front of his residence in the British Settlement, and there it remained in spite of British protests. The next June both the British and American consuls issued proclamations to their nationals stating that the protection of their respective flags would be given to rented land wherever situated. The situation was explained by Griswold to the new American Commissioner, Davis, then at Macau,

<sup>2</sup> Maybon and Fredet state that the same land was later offered to the French. It was located in what is now Hongkew.

who attempted to get some satisfaction from Sen, the Canton viceroy, but without success. It was then agreed to await a specific case in order to bring the issue to a head.

The case which settled the question arose early in 1852, when a certain Mr. Roundy, an American, rented a piece of land in the British Settlement but had his deeds registered by the American Consul and not by the British Consul as provided for in the Land Regulations. The deeds were then forwarded to the Taotai for his approval. The Taotai protested the action. This protest drew from the American Vice-Consul, Cunningham, the solemn threat that unless the deeds were returned with the Taotai's seal within forty-eight hours all communication between American and Chinese authorities in Shanghai would cease. This solemn threat was sufficient. The deeds were returned to the American Consulate properly sealed.<sup>8</sup> As a result of this, Cunningham issued a proclamation to all United States citizens on March 20, as follows:

The undersigned deems it proper to inform his countrymen, as there seems to be some misapprehension upon the point, that any purchase of land within Shanghai or in its neighborhood effected according to the terms of the treaty can be settled and confirmed with the Chinese officers through this Consulate without intervention in any manner of any foreign authorities. The

<sup>8</sup> Marshall wrote that other Chinese officials were not in agreement with the Shanghai Taotai in his refusal to acknowledge American authority in the Roundy case. He showed that in reply to a memorial presented after the Treaty of Nanking was ratified the Emperor directed the local authorities at Shanghai to allow merchants of Great Britain and of all nations to bring their families to the five ports and reside in accordance with the treaty stipulations. Marshall contended that this supported the American principle of no exclusive concessions.

right has been uniformly maintained by the United States authorities, has been acted upon by Consul Griswold, and in recent correspondence with H. E. the Taotai, has been fully acknowledged by him.<sup>4</sup>

Although the British Consul, Rutherford Alcock, addressed formal protests to the British Minister to China and to the Foreign Office, the international situation was such that American friendship was too valuable to risk further controversy over what seemed to the Foreign Office a trivial matter. The Americans won their point and subsequently the support of the British to the principle of no exclusive concessions at Shanghai. This paved the way for the establishment of the International Settlement, based in theory on the principle of equal rights for all foreigners.

#### THE FRENCH DEMAND FOR A SEPARATE AREA

The Americans had stood for the principle of no exclusive concessions, largely because they did not wish to assume the responsibility for one unfavorably located; but the French had other ideas which they proceeded to put into effect despite both American and British objections. The first regularly appointed French Consul to Shanghai was M. Charles de Montigny, who arrived in January 1847. Finding that hotel rates for himself and family were a bit high (Chinese \$600 per month), he negotiated with Mgr. Maresca, a Catholic priest, for a house at \$400 (Chinese) per year located between the Chinese city wall and the Yang-king-pang. "*C'est petit*," he wrote, "*mais*

<sup>4</sup> *North China Herald*, March 20, 1852.

*j'y serai en France.*"<sup>5</sup> The arrival of a French wine merchant, M. Remi, and a controversy which developed between him and the famous Sassoon interests, under British protection, caused the French Consul in July 1848 to demand from the Taotai a settlement for the use of French merchants. He stated that the land he wanted was where he lived and that his demand was "in conformity with the Treaty."<sup>6</sup> Negotiations occupied a number of months, and finally on April 6, 1849, the Taotai, Lin-Kouei, "in concert" with M. de Montigny, designated an area to be placed under the exclusive control of the Consul for France, where any foreigners might rent land on submission of their deeds to the French Consul for approval.<sup>7</sup> The fact that the French Minister to China was due to arrive in Shanghai on a French warship may have influenced the Taotai in his acceptance.

This action of the French drew protests from both Balfour and Griswold. The latter in a statement to the Taotai wrote: "There is nothing in the said treaties which gives any foreign representative the right to claim, or renders it incumbent on you to grant, particular districts to one nation, excluding the people of other countries, except by the consent of the consuls to whom the grant is made."<sup>8</sup> The protests fell on deaf ears, and the Americans were too busy in their controversy with the British to push the matter farther at this time. Thus the French early adopted the principle of exclusive concessions, forced its

<sup>5</sup> Maybon and Fredet, *op. cit.*, p. 25.

<sup>6</sup> Letter of de Montigny to the Taoti, *ibid.*, pp. 30-31.

<sup>7</sup> Text of the agreement, *ibid.*, pp. 33-34.

<sup>8</sup> Quoted in Tyler Dennett, *Americans in Eastern Asia*, p. 127.

acceptance by the Taotai, and laid the basis for the so-called French Concession under the exclusive control of the French Consul.

#### THE LAND REGULATIONS OF 1854

In May 1853 the British Consul, Alcock, advised Cunningham, now American Consul, that "Her Majesty's Government has no desire whatever to assert either exclusive right or jurisdiction over unappropriated land."<sup>9</sup> This statement indicates that Anglo-American attitudes concerning treaty terms after several years of controversy were no longer at variance. This identity of views was not due entirely to a growing friendship but had in a measure been forced by the increasing insecurity of all foreigners in Shanghai at the beginning of the second half of the nineteenth century. By 1853 Shanghai had become an important center of foreign trade, rivaling Canton, with over two hundred ships clearing the port annually.

The Chinese population, however, had increased out of all proportion to the growing trade of the port and was estimated at three hundred thousand in 1852. These extra thousands had come not to trade but as refugees from the growing menace of the Taiping rebellion. This strange revolt, which is not yet fully understood in all its aspects, had arisen in the south and was sweeping rapidly toward the Yangtze Valley, where it was to rage for ten years. Thousands of Chinese sought the safety of the foreign settlements in 1852 and 1853 as the Taipings neared Shanghai. While many foreign merchants welcomed the opportunity to profit by housing the refugees in ramshackle

<sup>9</sup> *North China Herald*, May 10, 1853.

tenements, nevertheless the net effect was to make the foreigners apprehensive for their own safety. For even if the Taiping rebels could be prevented from taking the foreign settlements, which some doubted, many were certain that they would be saved only to be engulfed by mobs of refugees.

The situation was undoubtedly dangerous, and was made doubly so by the friction and jealousy which arose among the various foreign authorities. The British and Americans were able to co-operate fairly well, but they could not get along with the French. The consular authorities of all three nationalities were at odds with their respective naval commanders, who refused to render aid on request of mere consular and diplomatic officials but insisted on receiving their orders direct from their superiors in far-off capitals.

At this juncture the American naval officer, Commodore Perry, sailed for Japan, while Commissioner Marshall, then resident in Shanghai, wrote to the Secretary of State: "It is my duty to request the attention of the President in an especial manner to this communication for I conceive the action of Commodore Perry, (or of the government, if he is complying with the spirit of his instructions) to be impolitic; unfair to the American owners whose property is exposed to risk in the five ports of China." Marshall's solution was nothing short of intervention: "An interference by the United States to quiet and tranquilize China would be a mission of humanity and charity."<sup>10</sup>

<sup>10</sup> Marshall correspondence, *op. cit.*, p. 215.

The Chinese, however, were left without the tranquillizing force of the United States, and the residents of Shanghai were left to shift for themselves and to devise means for their own protection. On April 9, 1853, meetings of both British and American residents were held for the purpose of forming volunteer corps for the protection of these groups. On April 16 there was formed a single "Shanghai Volunteer Corps," which set the precedent for the unique international municipal army of the International Settlement. Also on this date an emergency committee of co-operation between British and Americans was inaugurated to aid the consuls in dealing with the situation.<sup>11</sup>

In the meantime British Consul Alcock had been drafting a new code of Land Regulations which he hoped would be made to apply to all foreigners in Shanghai and would include the French as well as the British Settlements. He submitted his draft to United States Commissioner Marshall in May. From that time until the following July, Marshall, Alcock, and Cunningham discussed the draft code, and the British Regulations of 1845 ceased to be operative.

These discussions brought out sharply the divergent views of the British and American authorities as to the basis for a municipal government. Two principal points of difference were revealed. First, Alcock desired the Settlements to be under the virtual control of the Treaty Consuls. In sending his draft to Cunningham for transmittal to Marshall, he wrote that these new regulations

<sup>11</sup> *North China Herald*, April 16, 1853.

would have the effect of placing the British Settlement under the "joint control and supervision of the Consuls of the Treaty Powers and the local Chinese authorities; the renters having the management of the details and of all funds, etc., connected with roads and jetties and other municipal purposes, in their own hands."<sup>12</sup> The idea of establishing consular control seems to have been an attempt on Alcock's part to assert consular authority and to have a police force at the command of the consuls which could be used for Settlement protection when necessary. This grew out of the refusal of the British Admiral to be bound by consular orders and the continued friction between the consuls and the naval authorities over the question of Settlement protection.

Marshall objected to this point of view and suggested that full authority to determine the extension of roads, building of wharves, etc., should be given to the taxpayers and that there should be no consular intervention, especially in the question of land transfers. The police question was raised again at a later date and Alcock was opposed by Marshall on that issue also. Commissioner Marshall's suggestions were eventually incorporated in the 1854 Land Regulations, but the division of authority between the consuls and the municipal officers was never clearly established.

The second point of difference arose from the contention of Alcock that Chinese should be excluded from the Settlements. In a notification published in January 1854, he states :

<sup>12</sup> Marshall correspondence, *op. cit.*, letter of May 23, 1853.

In reference to the good order and security of the Settlement, either as regards local government, apart from the Chinese municipal administration, or security from fire and political sources of danger and inconvenience, it would have seemed much preferable (where ample space existed beyond the ground covered by the foreign hong) that a separate quarter should be made for the accommodation of those Chinese more or less connected with our trade, who desired to share in the security of a neutral ground and the protection of foreign flags. . . . Her Majesty's Consul trusts that the importance of the question at issue will not be overlooked but that the whole foreign community will give it prompt and careful consideration, while there is time to prevent the permanent location of a large Chinese population in the heart of the Settlement, hitherto occupied exclusively, and on that account, he believes with both security and comfort, by the foreign residents.<sup>18</sup>

Again Marshall differed and contended that it was not sound policy to segregate populations. The American representative expressed himself as feeling that a mingling of populations would tend to break down prejudice. History has not supported this contention. As a matter of fact it may be considered doubtful whether or not the foreigners could have excluded the Chinese from the Settlements even if they had wished to do so, for foreign merchants were making profits from renting houses to the refugees and their numbers had become so large that a policy of forcible exclusion would have received little support from the merchants.

The acceptance of Marshall's views in place of those of Alcock had a vital effect on the future of the Settlements. The inclusion of the Chinese has served to com-

<sup>18</sup> *North China Herald*, January 14, 1854, notification dated January 9.

plicate every problem of municipal government, in addition to giving rise to difficult jurisdictional questions. The lack of definition of powers as between the consuls and the municipal authorities has often caused friction and prevented progress.

On July 11, 1854, the land-renters of the British Settlement approved the new regulations as worked out by Alcock, Marshall, and Cunningham undoubtedly with the assistance of other local luminaries.<sup>14</sup> It was announced that they had received the approval of the British, American, and French consuls and the Shanghai Taotai.<sup>15</sup> The boundaries within which this code was to apply were those of the original British Settlement of 1845, with the western boundary as fixed in 1848 and those of the French Settlement as defined in 1849. It was also provided that they should apply to any new grants given to France or to the United States.

The new code, consisting of fourteen regulations, constituted a considerable improvement over the British rules of 1845.<sup>16</sup> It embodied the fruits of Marshall's contentions and of the American insistence on the principle of no exclusive concessions. Chinese were permitted to reside and to buy or rent land in the Settlements. Land could be rented by any foreigner through the medium of his consulate or through the consulate of a friendly power if he

<sup>14</sup> *Ibid.*, July 16, 1854.

<sup>15</sup> With regard to French approval, see discussion below on page 32.

<sup>16</sup> Text of the 1854 Land Regulations in *United States Senate Executive Documents*, 1853-54, 35th Congress, 2d Session, Vol. 34, pp. 125-58.

were unrepresented. An annual meeting of ratepayers was to be the means of raising revenue and electing a committee of three or more renters to administer municipal affairs. This elective committee was the outgrowth of the committee of "three upright merchants" appointed by the British Consul under the Regulations of 1845. After the 1854 Regulations had been approved, the same meeting, on motion of the American Consul, voted "That residents be annually chosen by the votes of a public meeting to be held in the month of March, to administer the affairs of the Community, to be called a Municipal Council and that it consist of a Chairman and six members."<sup>17</sup> A system of licenses was established and various restrictions were set forth for building construction and use, largely to insure safety and good health.

Breach of these regulations was punishable by the consular authorities having jurisdiction or by the Chinese officials. Amendments had to receive the approval of the Chinese Intendant of Circuit (the Taotai), the Chinese Imperial Commissioner managing affairs at the five ports, the Foreign Consuls at Shanghai, and the Foreign Ministers at Peking. This provision made the process of amendment even more difficult than that of the preceding British code.

The new regulations were soon proclaimed in force and Marshall's successor, Robert McLane, wrote to his government:

These arrangements are of a very comprehensive character, securing the peace and the tranquility of the foreign settlement at

<sup>17</sup> Shanghai Municipal Council, "Archives—Minutes of Land-renters Meetings" (unpublished), meeting of July 11, 1852.

Shanghai, and the lives, property and commercial privileges of our people; while they render it impossible for any foreign power to obtain an undue ascendancy. The Land Regulations signed by the Ministers of the three Treaty Powers renounce the pretensions heretofore set up by Great Britain and France to the exclusive enjoyment of certain concessions made to them by the local authorities of China, and all foreigners under the jurisdiction of their respective consuls enjoy the same privileges; the concurrent and joint action of the Consuls and the local authorities of China having established a fundamental basis on which the rights of all are firmly planted.<sup>18</sup>

Either Commissioner McLane was an optimist, or, as is more likely, he had not been informed of the true facts concerning the approval of the 1854 Regulations. His sanguine expectations as to the unity and common rights secured were never fulfilled, for the French, contrary to common opinion, had never fully ratified these Regulations and now proceeded to carry out their original intention of establishing a settlement under the exclusive control of the French authorities.

#### ESTABLISHMENT OF THE FRENCH CONCESSION

A correspondent of the *North China Herald*, Shanghai's oldest English-language newspaper, wrote that the 1854 Regulations had established a new firm of Great Britain, France, the United States and Company, but that, "the French member of the new firm is but a sleeping partner and has been admitted no doubt rather on account

<sup>18</sup> *United States Senate Executive Documents*, 1853-1854, 35th Congress, 2d Session, Correspondence of Commissioner Robert McLane, Vol. 34, No. 22.

of the high respectability of his connections than for any accession of business he is likely to bring."<sup>19</sup> France, however, was not even a full member of the new "firm," let alone a sleeping one. The provisions of the new regulations had included the area set aside for the French in 1849 in the scope of their operations; but, in spite of statements to the contrary, this code had never been officially approved by the French government, although attempts to make it binding in the French area provoked controversies and stirred up friction for ten years.

The French desired an exclusive settlement, or at least an area under the exclusive control of the French Consul, for several reasons, partly political, mostly commercial. French trade at Shanghai was not large, and was completely overshadowed by that of the British and Americans. France, however, was considered a great power, and French prestige must be maintained on the Whangpoo as well as elsewhere. In one large international settlement French interests would count for little; but a separate area, though small, would mean much. In addition to this, the grant of 1849 had given the French valuable river frontage south of the Yang-king-pang toward the Chinese city, which if retained could be controlled by reason of the fact that all deeds would have to pass through the hands of the French Consul. Naturally the French were loth to part with this advantage. In addition to these considerations, the experience of the French in Shanghai during the Taiping rebellion further strengthened their desire for an exclusive area.

<sup>19</sup> *North China Herald*, July 15, 1854, letter of *Asper*.

The draft regulations proposed by Alcock in 1853 came as a surprise to M. Edan, the French Consul, and found him in a rather difficult position. The Taiping rebels were pressing close to Shanghai, and the French had no war-ships available for their own protection. Edan asked the French Minister, M. de Bourboulon, for instructions. He was told to accept the new code in principle but to await the final action of his home government. De Bourboulon was willing to compromise, but did not want to see the loss of his country's concession.<sup>20</sup> He, in turn, asked Paris for instructions, while events in Shanghai grew daily more serious.

By April 1854 both the insurgent Taipings and the Imperial troops sent to suppress the rebellion were encamped outside of Shanghai, and the foreigners had no desire to permit their settlement to be used as a battleground if they could prevent it. The camp of the Imperial forces lay close to the British Settlement, while the rebels invested the Chinese walled town and threatened the French area. The French were urged to seek refuge in the British Settlement, but decided to remain where they were, fearing the loss of protection for French missionaries and the French cathedral of Tong-ka-dou.<sup>21</sup> The French were accused of providing the rebels with arms and supplies and thus provoking an attack on the foreign settlements. Undoubtedly there was such clandestine traffic, but it was not wholly French, since other foreigners did not let nationality stand in the way of a little profit.

<sup>20</sup> Maybon and Fredet, *op. cit.*, pp. 137 ff.

<sup>21</sup> *Ibid.*

These charges, nevertheless, heightened the ill feeling, and although the French authorities felt keenly their lack of protection they were not sure it would be granted in return for accepting the 1854 Regulations.

In August 1854 de Bourboulon, still lacking instructions from Paris, notified the British Minister and the American Commissioner that his acceptance of the new regulations was "conditional on the approval of His Imperial Majesty."<sup>22</sup> He was nevertheless urged to sign the Regulations, and the fact of his conditional acceptance was not made public by the British and American authorities until years later, since they feared that the new scheme might fail if it were known that it lacked official French sanction.<sup>23</sup>

By December 1854 the attitude of the Taipings was so menacing that the French decided to take independent action to expel them from the Chinese city. A British and American volunteer force, aided by some naval units, in the famous "Battle of Muddy Flat," had already forced the Imperialists to move their camp away from the British Settlement. The French were successful in driving the insurgents out, but this action enabled the Imperialists to enter the city, which they thoroughly looted. At this point the French played a diplomatic ace and demanded damages from the Imperialists. An agreement with the Taotai provided for an indemnity and, what was more important,

<sup>22</sup> Maybon and Fredet, *op. cit.*, p. 148.

<sup>23</sup> De Bourboulon signed the 1854 Regulations on July 26, 1854, and Edan, French Consul, on August 1, 1854. When their conditional acceptance became known it evoked a storm of protests from British and Americans. See *North China Herald*, May 19, 1866.

an extension of the original French area south along the much-coveted river front.<sup>24</sup>

Though the danger from the Taipings lessened in succeeding years, the friction between the French and their fellow-foreigners to the north continued. The French felt that full acceptance of the 1854 Land Regulations would place them in an inferior position and that the protection gained through such an arrangement would be dubious. Although their officials had signed the code, their government had not given its official approval, and as far as they were concerned the rules did not apply to the French Settlement. The French Minister finally wrote to Paris and requested Drouyn de Lhuys, the Foreign Minister, not to sanction a contract so inequitable and so prejudicial to French interests.<sup>25</sup> Edan wrote his superior in 1855: "For my part, I recognize no official act or official authority of this code, in that which concerns me and my nationals."<sup>26</sup>

From 1855 to 1861, French consuls on all occasions affirmed the exclusive character of the French Concession, while the British and American authorities continued attempts to bring them to terms. The French, however, did not succumb to the spirit of co-operation, for by this time new commercial considerations had arisen which made a separate French settlement a virtual necessity. The Compagnie Messageries Maritimes had decided to establish a branch line to Shanghai and needed river frontage for

<sup>24</sup> Maybon and Fredet, *op. cit.*, pp. 150 ff.; and Morse, *International Relations of the Chinese Empire*, p. 462.

<sup>25</sup> Maybon and Fredet, *op. cit.*, p. 160.

<sup>26</sup> *Ibid.*

wharves and godowns. Rejecting a site down river to the east, they insisted on a section of the area south of the Yang-king-pang, a part of which was already under French control. To secure this advantageous position regardless of priority of claim, it was vital that the French Consul control the renting of the river frontage through his approval of title deeds. This he could not do if the French area were included in one large International Settlement as contemplated in the 1854 Regulations. Furthermore, it was discovered that the frontage desired was about to be rented by certain American and British merchants whose deeds had yet to receive consular approval. The French therefore proceeded to negotiate an agreement with the Chinese authorities for a further extension to include the much-desired river frontage and additional land to the west.<sup>27</sup> On March 31, 1861, the Taotai proclaimed this extension, and on May 13 of the same year the Municipal Council operating under the 1854 Land Regulations received notice of the creation of a similar body of French origin in the now fully established French Concession. During this interval the French Consul had notified the American and British negotiators for the waterfront property that they must give way, as he had approved the deeds of the Compagnie Messageries Maritimes to the same property. The British fussed and the Americans fumed, while the new Conseil d'Administration Municipale announced that they would now be pleased to cooperate with the other foreign authorities. With the issuance of *Règlements* for the French Concession in July

<sup>27</sup> Maybon and Fredet, *op. cit.*, pp. 244 ff.

1866,<sup>28</sup> "a little bit of France" in Shanghai became a *fait accompli* beyond the power of the Americans and British to undo.

#### FORMATION OF THE INTERNATIONAL SETTLEMENT

While the French were establishing their separate settlement, the 1854 Regulations had been in effect north of the Yang-king-pang and a Municipal Council elected by the foreign ratepayers had been functioning as the municipal authority. But farther north and east, across Soochow Creek, there had grown up another community, the so-called "American Settlement." In this area, known as Hongkew, the American Consulate was now located and some American missionaries carried on their activities. A few foreign residents had settled there, mostly Americans. This was the area originally offered by the Taotai to the Americans and temporarily refused by them. Now it had become more desirable; yet no formal settlement had been laid out and no arrangements between American and Chinese authorities had been entered into. The foreigners living there remained under the jurisdiction of their respective consuls, who applied the 1854 rules to such cases as came before them.

The "American Settlement" continued to grow, and a natural desire on the part of the British and Americans to consolidate the two areas and establish a municipal system, on a more permanent basis than that contemplated

<sup>28</sup> Translation of the text of the *Règlements* in *United States House Executive Documents*, 1867-68, 39th Congress, 2d Session, Part I, Correspondence with China, No. 1.

by the 1854 Land Regulations, led to the initiation of discussions for revision of this code. Amalgamation of the two areas was the starting point for these discussions. At the same time the American Consul moved to place the Hongkew area on a more stable basis and turn it into an American settlement. This move was not a reversion by the Americans to the principle of exclusive concessions but was forced by the recurrence of the dangers of the Taiping rebellion which threatened Shanghai from 1861 to 1864 as had been the case ten years earlier.<sup>29</sup> In fact the Americans had applied to the Municipal Council for protection but were informed that the 1854 Regulations were inoperative beyond Soochow Creek. To remedy this situation the American Consul called a meeting of Hongkew residents to form a defense committee and assess themselves for its upkeep.<sup>30</sup> This committee was then merged with the committee of the British Settlement, and throughout the next twelve months amalgamation of the two areas was repeatedly urged.

By the spring of 1863 unification had been virtually agreed upon, but opposition on the part of a few British ratepayers delayed final consolidation until later in the year.<sup>31</sup> On July 4, 1863, the American Consul, Mr. George F. Seward, and the Shanghai Taotai and Intendant of Circuit, Huang, announced the delimitation of boundaries for an American settlement north and east of Soo-

<sup>29</sup> *North China Herald*, September 28, 1861.

<sup>30</sup> *Ibid.*, January 18, 1862, meeting of Hongkew residents held on January 16.

<sup>31</sup> *North China Herald*, April 11, 1863.

chow Creek and covering the Hongkew district.<sup>82</sup> The agreement was significant for a number of reasons. First, it paved the way for the incorporation of this area with the British area to form a general foreign settlement and made easier the approval of the local Chinese officials to the scheme of consolidation. Second, the agreement provided for the residence of foreigners in this area and made them subject to the "municipal authority." This provision further clarified the question of the jurisdiction of the municipal administration over foreigners. Finally, it established joint jurisdiction of Chinese and foreign authorities in the area as to taxes and application of laws. This was but a step intermediate to the full establishment of foreign jurisdiction within the Settlements to the almost total exclusion of Chinese authority.

The agreement for the "American Settlement," so far as is known, was never officially confirmed by the United States government nor was it officially disapproved. Probably this was because it was considered a temporary expedient, and because, in 1863, the actions of a few Americans in Shanghai were of far less importance than the actions of thousands of their compatriots south of Mason and Dixon's Line. On September 21, 1863, a meeting of the land-renters of the "American Settlement" voted to amalgamate with their neighbors on the other side of Soochow Creek, and on November 30, 1863, the union was confirmed by the land-renters on the British side. With this accomplished, revision of the Land Regulations, which had been proceeding slowly, now moved on apace.

<sup>82</sup> Text of the agreement in *Foreign Relations of the United States*, 1867, Part I, China, Inclosure in No. 125.

## REVISION OF THE 1854 LAND REGULATIONS

About a year before the consolidation of these two Settlements a committee of ratepayers had been appointed to work on a revised code. The Treaty Consuls had agreed to hold monthly meetings while the revision was going on and to keep in constant communication with their superiors, the Ministers in Peking. By April 1863 the work had so far progressed that American Consul Cunningham was able to write to Anson Burlingame, United States Minister in Peking, as follows:

We go no further until we learn whether the ministers will support a municipal system founded on these principles. If they will, we shall then proceed to elaborate details upon which we shall again ask their approval or disapproval. Proceeding in this cautious way, perhaps we may save the Settlement from the disasters that will befall it if all foreign elements in the municipal control are banished.<sup>33</sup>

The principles Cunningham alludes to had been agreed upon by the consuls and the committee of ratepayers working on the project. They were as follows:

That whatever authority [territorial authority] is established shall be derived directly from the Imperial government through our Ministers.

That such authority will not extend beyond simple municipal matters such as roads, police and taxes for municipal objects.

That the Chinese not in foreign employ, shall be wholly under the control of Chinese officers, just as much as in the Chinese city.

That each Consul shall have the government and control of his own people as now, the municipal authorities simply arresting

<sup>33</sup> *Foreign Relations of the United States, 1863-64, China, No. 37, p. 856.*

offenders against the public peace, handing them over and prosecuting them before their respective authorities, Chinese or others as the case may be.

That there shall be a Chinese element in the Municipal system, to which reference shall be made and assent obtained to any measure affecting the Chinese residents, if the necessary concurrence can be obtained that all foreign quarters be under one municipal system.<sup>84</sup>

These principles were approved by Mr. Burlingame and also by the Secretary of State, who wrote: "I hope that the municipal arrangements for the convenience and protection of foreigners at Shanghai will be harmoniously made and afford a just and equal security to all parties."<sup>85</sup>

The question of exclusive concessions was raised, but in the face of the concerted stand by the British and American representatives against this principle it was not allowed to interfere with the arrangements for the general foreign settlement. The only resistance came from the French, who could not be won over on any count.

The most difficult problem seemed to be the nature of the relation of the municipal authority to the Chinese residents in the Settlement. The agreement for delimitation of the "American Settlement" had acknowledged the jurisdiction of the Chinese local officials over Chinese in the Settlement but had established a joint taxing power by both foreign and Chinese authorities. In other words, foreigners could be taxed only by their own municipal authority, but Chinese living in the "American Settlement" could be taxed by both foreign and Chinese agencies. The Chinese were thus made subject to double taxation and

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

double jurisdiction.<sup>36</sup> Sir Frederick Bruce, the British Minister, took the position that the foreigners "have no power to compel the Chinese, who live within the so-called concessions, to pay any tax for local purposes except through and with the consent of their local authorities."<sup>37</sup>

Because of these differences, a local committee of foreigners was appointed to negotiate with the Chinese on the question of jurisdiction. No conclusive results came from this committee's work, but the problem was partially cared for by levying taxes on goods landed in the Settlement and on all lands and rents in the Settlement regardless of ownership. The question of the right of foreign jurisdiction over Chinese was thus side-stepped, as those Chinese who had sought the safety of the Settlement seemed willing to contribute their share of the local funds. Gradually the municipal authorities assumed exclusive jurisdiction over Chinese in the Settlement, but the whole problem was never settled satisfactorily, for the local foreign authorities were mainly concerned with obtaining local revenue and keeping the Settlement safe for themselves. The Foreign

<sup>36</sup> The Sino-American agreement for Hongkew also provided that no arrests could be made by Chinese officials in the area except on warrants stamped by the municipal authorities. Burlingame commented on this as follows: "We have no right for municipal or other purposes to take jurisdiction of Chinese or of the subjects of non-treaty powers, even though requested to do so by the Chinese authorities. We should seek to strengthen Chinese administration in the direction of order and see to it that they do not shirk their treaty obligations" (*North China Herald*, January 19, 1864). This evidences the differences of opinion among the foreign authorities on the subject.

<sup>37</sup> *United States House Executive Documents*, 1864, Vol. II, Correspondence with China, No. 36.

Ministers in Peking, far away from the local problems, could afford to argue the legal niceties of treaty terminology and criticize the tactics employed by the Shanghai residents. Mutual lack of understanding resulted, a fact which continued to prevent the adoption of progressive legislation for the foreign settlements.

Within the first twenty-seven years of its existence as an open port, the lines of Shanghai's future development were fixed. These years saw the settlement of the controversy over the right to exclusive concessions. The British and Americans accepted the principle of no exclusive concessions because they found it did not work a hardship on the business activities of their nationals and even provided certain advantages. In this same period the French rejected this principle and resisted all efforts toward a single foreign area. The determining factor in the French decision was the belief that disadvantage would accrue to French commercial interests under a single international regime.

The creation of two foreign areas, each with its separate municipal government, was not the only result of this period of development. The Taiping rebellion, which played such a large part in determining the course of action of the foreigners, had shown the Chinese that the existence of the foreign settlements meant the existence of islands of safety for themselves. The Chinese also found profit in the growing trade of the port. This quarter of a century, then, established an interdependence of Chinese and foreigners in the business of Shanghai, a fact not always appreciated by either group. And the foreigners, unwilling and perhaps powerless to exclude the Chi-

nese from the settlements, by admitting them also admitted a host of complex and difficult problems many of which still await solution.

### SHANGHAI IN 1870

The Land Regulations were finally revised and went into effect in 1870.<sup>38</sup> They applied to the now consolidated British and "American" Settlements, which soon became known as the International Settlement. The separate French Concession constituted the other foreign-controlled area. In both, the organic laws or regulations adopted in the 'sixties have stood practically intact since that time. The Shanghai of 1870, therefore, is strangely like and strangely unlike the Shanghai of today. By 1870 three cities, two of them under foreign administration, were in existence, as is the case today. The form and structure of the foreign administrations have changed little in the intervening years and, although the Chinese are now attempting to set up a city government on Western lines, many of its features bear a strong resemblance to the government of the Chinese city with which the foreigners had to deal in 1870. The Municipal Councils of 1870 were struggling over problems of conflicting jurisdiction and there was considerable friction at times among the foreign authorities. So it is today. Taxation, health and sanitation, roads, education, and Settlement protection were the questions which vexed the city fathers of the 'seventies as they do today.

<sup>38</sup> See detailed description of the revised Regulations of 1869 in chapter iii.

Yet if certain fundamental problems of the foreign and Chinese administrations have not changed a great deal, much about Shanghai has changed. The quarter of a century which followed the signing of the Treaty of Nanking saw a large growth in trade and commerce. The annual tonnage of shipping had increased from about fifty thousand in 1849 to over one million tons in 1870. The commodious business houses, the residences of the foreign *taipans*, and the opulence of their *compradores* were ample evidence that prosperity had come to Shanghai in spite of civil war and rebellion. Yet the Shanghai of 1870 was really little more than a trading post located fortunately near that great artery of commerce, the Yangtze. Shanghai's little problems were lost in the maelstrom of the quickening industrial revolution. Its trade was only a minute item in world-trade accounts. Not yet caught in the currents of international commerce and politics, it was a rather comfortable place, where foreign heads of firms led an easy sporting life according to their tastes; where the harder-working foreign clerks saved their earnings assiduously against future retirement "home-side" or gambled them away recklessly as they nursed ambition through the cold winters and the hot, wet summers; where the Chinese masses lived under an Emperor who was "far away" and went about their tasks properly impressed by, and properly respectful of, their foreign "masters."

The sixty-five subsequent years have turned Shanghai from a trading post on the Whangpoo to the fifth largest port in the world; from a city of the third rank in a decadent empire to the first city in Republican China;

from an item in world-trade accounts to an international problem. This is the Shanghai that is more than an interesting tourist stop, that has been subjected to the forces of nationalism, imperialism, and communism, and that must be examined in detail if one is to understand the contemporary importance of its problems in the relations between China and the foreign powers.

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### CHAPTER III

## THE INTERNATIONAL SETTLEMENT

**O**F THE THREE municipalities forming urban Shanghai the International Settlement is the most important. Its importance is due to two factors—location and security. Just as the city of Shanghai has become the commercial and financial capital of China, so the International Settlement has become the commercial and financial center of Shanghai. Growing out of the original British Settlement advantageously situated on the river, the present area of 8.3 square miles includes over 31,000 feet of river frontage and has become the natural center for shipping, industry, finance, and business.

It is sometimes difficult to trace the boundaries of the International Settlement, as it is a part of a great city just as Manhattan is a part of New York. A careful observer, however, soon notes that, where the principal streets lead into the French Concession and into Chinese territory, huge steel gates often mark the boundary and at strategic points blockhouses guard the passage. This serves as a reminder that in addition to its advantages of location the Settlement's importance has been due to its security. Protected by its own volunteer army and by the armed forces of the Treaty Powers, both foreigners and Chinese have found it a safe place for residence, investment, and trade—safe from Chinese civil wars and safe from the jurisdiction of the Chinese government.

Over 1,150,000 people live in the "Foreign Settlement North of the Yang-king-pang." Although only about 39,000 of this number are foreigners, representatives of forty-six nationalities were registered in the last census.<sup>1</sup> For three-quarters of a century this small foreign minority has ruled a large Chinese majority and provided the Settlement with an efficient municipal government. The basis for this government is to be found in the Land Regulations of 1869, which, with few changes, have served as the only organic law for the Settlement's administration.

#### THE LAND REGULATIONS OF 1869

In general the Regulations of 1869 incorporated the main provisions of the code of 1854.<sup>2</sup> The principles enumerated in 1863, which were to form the basis of these Regulations, were lost sight of or modified in Shanghai and Peking during the negotiations for their approval.<sup>3</sup> The principle that the authority of the municipal government established by these Regulations was to be derived "directly from the Imperial Government through our ministers" was not followed. Instead, the Regulations derived their authority through agreement of the local Chi-

<sup>1</sup> The 1935 census for the Settlement enumerated: Japanese, 20,242; British, 6,595; Russian, 3,017; Indian, 2,341; American, 2,017; the Chinese, 1,120,860, added to the foreign total of 38,915 made a grand total of 1,159,775. The foreign total included 10,332 residents of the "Outside Roads" areas.

<sup>2</sup> Text of the Land Regulations of 1869 in Hertslet's *China Treaties*, Vol. II, pp. 664 ff. The Regulations as amended and published by the Shanghai Municipal Council are reprinted in Richard C. Fee-tham, *Report to the Shanghai Municipal Council* (Shanghai, 1931), Vol. I, p. 68.

<sup>3</sup> See discussion above, pp. 38-40.

nese officials and were presented to the Chinese Imperial Government as a *fait accompli*. So far as is known, the Imperial Government neither approved nor disapproved these Regulations. The question of Chinese and foreign jurisdiction over the Chinese residents of the Settlement was not clarified, nor was any provision made for a "Chinese element in the municipal system."<sup>4</sup>

The boundaries within which the Regulations were to operate now included the British and "American" settlements, a considerable enlargement of the area under foreign control. The provisions of earlier regulations as to methods of acquiring land were included with minor changes as to form and detail. All land transactions were to be registered at the proper consulate with notification to the Municipal Council. Thus any foreigner could now rent land from a Chinese owner by registering his deeds with his own consulate and the proper Chinese officials. Unrepresented foreigners were allowed to use the consulate of a friendly power in their transactions. This procedure made the Settlement international as far as land-renting was concerned, placing such transactions under the control of the Treaty Consuls rather than under a single consul as in the French Concession.<sup>5</sup>

The method of electing the executive committee or Municipal Council, the tenure of its members, and their qualifications, as well as the qualifications of voters, were clearly set forth. Provisions respecting violation or breach

<sup>4</sup> This, which is one of Cunningham's proposals, is discussed above, pp. 38-40.

<sup>5</sup> See discussion regarding this point in chapters iv and x, below, pp. 100-102.

of the Regulations remained the same as in the 1854 Regulations. The mode of amendment was changed but not simplified. Amendments now required approval of the rate-payers, the Shanghai Consular Body, the Ministers in Peking, and the central Chinese government. Because of the many authorities involved in the approval of amendments, few have been made, and the government of the Settlement has had to operate for three-quarters of a century within the framework of the 1869 Regulations.<sup>6</sup> Attached to the Regulations were a set of forty-two by-laws, in reality constituting a series of municipal ordinances regulating such matters as building construction, sanitation, roads, and licensing.<sup>7</sup>

#### LEGALITY OF THE LAND REGULATIONS

The legality of the Land Regulations has often been called in question but never successfully challenged. The code has been passed on in consular courts, in the Mixed Court, and in Chinese courts, and has been upheld by a variety of legal reasoning.<sup>8</sup> The question is important,

<sup>6</sup> Even an amendment to Regulation XVIII providing for only a minor change in the voting procedure failed of adoption in 1935 through lack of approval of the Chinese government.

<sup>7</sup> By-laws which relate solely to the Council and its officers can be passed by the Council. All others require the approval of the ratepayers, the Consular Body, and the Ministers in Peking.

<sup>8</sup> The following is a list of the principal cases and opinions dealing with the legality of the Land Regulations:

*Municipal Council v. Wills Estate*

H. B. M. Supreme Court for China, Decision of Sir Edmund Hornby. *North China Herald*, November 18, 1865.

*Municipal Council v. Messrs. Fierz and Bachman*

French Consular Court, Shanghai, Decisions of French Consul-

since these Regulations form the basis for the Settlement's government and its existence as a foreign-controlled area is dependent upon their enforcement.

The case for the Land Regulations is based upon a number of somewhat diverse contentions. The extreme view of the Regulations as a bona fide treaty was stated

General B. de Montmorand and assessors. Shanghai Municipal Council, *Annual Report*, 1865-66. Also in *North China Herald*, December 30, 1865.

*Municipal Council v. W. H. Fogg*

United States Consular Court, Decision of United States Consul-General George F. Seward. Shanghai Municipal Council, *Annual Report*, 1874-75.

*Muirhead and Barrett v. Tan-kwei Hop-sang*

Shanghai Mixed Court, July 25, 1877. Cited in Richard C. Feetham, *Report to the Shanghai Municipal Council* (Shanghai, 1931), Vol. I, p. 59.

*Municipal Council v. F. Reid*

United States Consular Court, Decision of United States Consul-General O. N. Denny. *United States House Executive Documents*, 1882-83, 47th Congress, 2d Session, Diplomatic Correspondence, Vol. I, p. 130.

Opinion of Thomas F. Bayard, Secretary of State of the United States. J. B. Moore, *Digest of International Law* (Washington, 1906), Vol. II, paragraph 273, pp. 648-49.

*Municipal Council v. George Sinnecker*

Shanghai Mixed Court. Shanghai Municipal Council, *Annual Report*, 1917, pp. 119a and 137a.

*China Publishing Co. v. Municipal Council*

Court of Consuls for the International Settlement. Shanghai Municipal Council, *Annual Report*, 1927, p. 86 ff.

*Ward Road Extension Case*

Shanghai Provisional Court, Decision of Judge Ling Sze. Civil Case G3163 (1928), August 1, 1928. Shanghai Municipal Council, *Report of the Municipal Advocate*, 1928.

Opinion of Mr. J. R. Jones, Secretary to the Shanghai Municipal Council. J. R. Jones, *Memorandum on the Land Regulations*, quoted in Feetham, *Report*, Vol. I, p. 44.

succinctly by Mr. Stirling Fessenden in a speech as chairman of the Municipal Council before the annual meeting of ratepayers on April 13, 1927:

Shanghai as a municipality was not created by and does not derive its power from the legislative assembly of any single state or country nor from the mandate of any single sovereign power. It was created by and derives its power from an agreement made between the so-called "Foreign Powers" on the one part and the Chinese government on the other part.

This agreement, which for want of a better name is known as the Land Regulations, has all the sanctity of a treaty, being as it is a solemn and inviolable compact between sovereign nations.

In substance and in effect, although not in form, it is a treaty of the highest class, being as it is, not merely a bi-lateral agreement between two sovereign powers, but an agreement to which many sovereign powers are parties.<sup>9</sup>

Most opinions, however, do not go this far, and there are two less extreme contentions. The first of these contentions is that the continued acquiescence of the Chinese government and Chinese officials in the Regulations and in action taken under them has created a prescriptive right to the maintenance of a municipal government under the Regulations.<sup>10</sup> In support of this contention it is argued that the Chinese government recognized their validity by implication in approving subsequent amendments to them, by sanctioning the extension of the Settlement in 1899 in which the Land Regulations were to apply, and by agree-

<sup>9</sup> *Municipal Gazette*, April 14, 1927, p. 137.

<sup>10</sup> A letter from the chairman of the Council to the Consular Body on July 7, 1897, refers to the fact that the Chinese government had not sanctioned the code of 1869. Sir Claude MacDonald, British Minister to China, is quoted as replying: "These Regulations having been in force for so many years, their validity is unquestioned."

ing to the establishment of Chinese courts in the Settlement in 1930. This latter agreement specifically directs these courts to take into account the Land Regulations and By-laws in their decisions.

The second contention for the legality of the Regulations is based on the theory that any community has a right to make laws and set up a government for its own self-preservation. Mr. Thomas F. Bayard, Secretary of State of the United States in 1887, applied this theory as follows:

. . . . it is not difficult to conceive of a case in which a community outside of any general system of law might organize a government and adopt rules and regulations which might be recognized as valid on the ground of the right of self-preservation, which is inherent in people everywhere . . . . In this light may be regarded the municipal ordinances of Shanghai. The foreign settlement not being subject to the laws of China, and the legal systems of the respective powers represented there being not only dissimilar *inter se*, but insufficient to meet local needs, it became necessary for the local residents interested in peace and order to supply the deficiency.<sup>11</sup>

In support of this contention it is argued that, although the Chinese government had obligated itself by treaty to protect foreigners and their property in the treaty ports, it was unable and unwilling to do so and therefore the foreigners took the necessary steps to protect themselves.

The case against the Land Regulations voiced particularly by Chinese nationalists and their foreign sympathizers rests on a strict interpretation of the treaties. It is argued that the treaties of 1842–1844 did not give the

<sup>11</sup> Opinion of Secretary Bayard cited in note 8.

foreigners any right to establish foreign-controlled municipalities in the treaty ports and that, while subsequent treaties did grant national concessions to some of the Treaty Powers, no such grant was ever made for the International Settlement at Shanghai. While there is no disagreement as to the fact that Settlement territory is still under the sovereignty of China, those who deny the validity of the Regulations insist that the Chinese government has never given up its right of jurisdiction over this area, and that therefore Chinese laws are the only legally recognized code which applies.<sup>12</sup> In other words it is maintained that prescriptive rights are invalid as against sovereign rights, even though these sovereign rights have not been exercised. Finally, the Chinese and others contend that acquiescence by a national government is far from a legal sanction.

An examination of the arguments for and against the legality of the Land Regulations leads to certain definite conclusions. First, the Land Regulations cannot by any stretch of the imagination be called a treaty, nor can they be said to have attained the "sanctity of a treaty." Furthermore there is little in the negotiation of the Regulations or their approval which is comparable to the treaty-making process as recognized under international law. Second, the Land Regulations are not in the same category as a city charter, since they were not specifically granted by the proper superior governmental body, in this case the central Chinese government. In conclusion, therefore,

<sup>12</sup> This should not be confused with the exercise of extraterritorial rights by individual foreigners, to which the Chinese government objects but which it recognizes as legal under the treaties.

the Land Regulations are found to rest on an indefinite and decidedly vague legal basis. They have been maintained by the superior force of the foreign powers in the absence of a Chinese government strong enough to assail their validity and to abrogate the unequal treaties upon which they rest.

#### THE ELECTORATE

The first permanent foreign residents of the Settlement were mostly merchants, and it was only natural that they should establish themselves as the electorate in any organized municipal system, since they were most in need of protection and had to bear the largest burden of taxation imposed. Once the merchants established themselves in control of the municipality, it was easy to perpetuate the "*taipan* oligarchy" in which the value of property owned or rented has always been and continues to be the basis of the municipal franchise.

At the present time the electorate consists of foreigners, either "land-renters" or "ratepayers" possessing the necessary property qualifications, as stated in Article XIX of the Land Regulations quoted below. There exists a system of plural voting described in the Regulations as follows:

Every foreigner, either individually or as a member of a firm, residing in the Settlement, having paid all taxes due, and being an owner of land of not less than five hundred taels in value, whose annual payment of assessment on land or houses or both, exclusive of all payments in respect of licences, shall amount to the sum of ten taels and upwards, or who shall be a householder paying an assessed rental of five hundred taels per annum and upwards, shall be entitled to vote at the election of the said mem-

bers of the Council and at the public meetings . . . . Provided always that this clause shall not entitle any firm to more than one vote.

This means in practice that every qualified foreigner is entitled to his own vote and, if so authorized, may also cast the one vote allowed a qualified foreign firm. Voting by proxy or "absentee voting" is permitted. Land Regulation XIX states :

Provided always that the proxies of Ratepayers who are absent from the Consular District of Shanghai, or are prevented by illness from attending shall be admitted to vote at such meetings.

This clause permits an individual or a firm possessing the necessary property qualifications for voting in the Settlement to cast a vote at the annual or special meetings, although the individual may be domiciled elsewhere and the firm may maintain only a branch office in Shanghai. This makes it possible for individuals or representatives of firms to appear at the meetings of ratepayers controlling anywhere from two to twenty-five votes.<sup>13</sup>

The electorate exercises its powers and performs its functions in an annual meeting and in such special meetings as are called from time to time. During the month of February, or March, of each year, the Treaty Consuls,<sup>14</sup> or a majority of them, give notice of the annual meeting,

<sup>13</sup> In the annual meeting of 1935 there were present 669 ratepayers, of whom fifteen individuals held 136 votes out of a total of 897, and one person held twenty-three votes. In the annual meeting of 1936, the 373 ratepayers present held 514 votes.

<sup>14</sup> Consuls of the powers possessing treaty rights compose the Consular Body. There are fifteen at present.

which must be held within twenty-one days from the date of such notice. Special meetings may be called by the Foreign Consuls acting either collectively or singly, or by a petition in writing signed by twenty-five qualified electors. Ten days' notice must be given for such meetings and only such matters can be taken up as are stated in the notice.

In December of each year the Municipal Council posts a list of the qualified voters, and before every meeting, annual or special, voting tickets are mailed to those qualified. These tickets are registered as the holder enters the meeting place and entitle him to vote and take part in the meeting. Decisions at all meetings are by majority of the votes represented. Such a decision taken at a special meeting binds the electorate as a whole if not less than one-third of the electors are present or represented. The agenda of each meeting is sent out with the notice, and any ratepayer desiring to bring up a special subject for the consideration of the meeting must publish a memorandum to that effect at least three days before the meeting. This effectively preserves a minority or Council control of the agenda.

The business of the meetings is usually presented in the form of resolutions, which are then debated and voted upon. No resolution or action of a ratepayers' meeting can be reconsidered or repealed without a three-fourths vote of those present and/or represented. Resolutions or amendments must be handed in writing to the chairman of the Council before being considered. Although there is a rule which provides that no person may speak more than once on any one subject, it is not usually enforced

except by the vocal disapproval of those present or occasionally by the chairman. Voting is usually *vive voce* or by show of hands. Any ratepayer, however, may call for a division, in which case the chairman reads the list of voters present and represented and the ayes and noes are recorded, or the voters may be requested to file by tellers stationed in the rear of the hall. A chairman and a secretary are elected for each meeting, and in some cases the Senior Consul may be called upon to preside. All meetings are open to the public, and the minutes of the annual and special meetings are published in the *Municipal Gazette* and the *North China Herald*.

These ratepayers' meetings, particularly the annual ones, are generally rather dull affairs with the business cut and dried. Resolutions approving the work of the Council and accepting the annual budget are proposed and accepted as arranged beforehand. Once in a while, a question such as the retention of the municipal orchestra or the problem of Chinese representation on the Council or the abolition of dog-racing in the Settlement or the purchase of a piece of property by the Council for a new municipal auditorium will stir up public interest and lively debate.

The number of qualified voters in 1935 was 3,852. At the annual meeting of that year, 897 votes were recorded as held by the 669 ratepayers actually present. The foreign population of the Settlement in 1935 was reported as 38,915, while the total population of the Settlement, Chinese and foreign, was over 1,150,000. Thus it is apparent that the government of the Settlement is representative of only a very small minority of the total population, either

Chinese or foreign. Essentially, the electorate is confined to the propertied interests. This situation has not been changed by the admission of Chinese to the Council.<sup>15</sup> These facts, plus the practice of proxy voting, minimize the interest of the foreigners in the government of the Settlement and many of the electors and other foreigners tend to assume a defeatist attitude, stating that the Settlement administration is run by a small group, the members of which control the ratepayers' meetings, and that nothing can be done about it.

The powers and duties of the electorate are set forth specifically in the Land Regulations and relate to (1) financial matters, (2) public land, (3) elections, and (4) miscellaneous matters. The ratepayers are given full powers in the raising of revenue, the approval of expenditures, and the levying of taxes, dues, and licenses. In their annual meeting they are called upon to "devise ways and means of raising the requisite funds" for the purpose of "construction of public works, and keeping the same in repair; and for cleaning, lighting, watering and draining the Settlement generally; establishing a watch or Police Force therein; purchasing or renting lands, houses and buildings for municipal purposes; paying the persons employed in any Municipal office or capacity; and for raising money by way of a loan or otherwise for any of the pur-

<sup>15</sup> The International Settlement Chinese Ratepayers' Association (formerly the Shanghai Chinese Ratepayers' Association) acts as the principal medium of expression for the views of the Chinese community and is representative of all the important Chinese business and financial groups as well as the trade and guild associations. See discussion below in chapter xi, pp. 239 ff.

poses aforesaid.”<sup>16</sup> A certified audit of the accounts of the outgoing Municipal Council is presented to the ratepayers and must be approved at each annual meeting. The ratepayers are also given the power to fix the tax rate and levy various kinds of taxes. This taxing power is stated in the Land Regulations as follows :

. . . . and it shall be competent to such meeting duly assembled, . . . . to impose and levy rates and issue licences for the purposes mentioned in the Bye-laws, and to declare an assessment in the form of a rate to be made on the said land or buildings, . . . . and it shall also be competent to the said meeting . . . . to impose other rates and taxes in the form of dues on all goods passed through the Chinese Custom House by any person or persons resident within the said limits, or landed, shipped, or transhipped at any place within the said limits; . . . . and in such other forms as may appear requisite and necessary for the purposes aforesaid.<sup>17</sup>

All together this constitutes a large grant of power and places on the electorate the responsibility for raising revenue within the Settlement.

The electoral duties of the voters consist in the annual nomination and election of the foreign members of the Municipal Council, and the choice at the annual meeting of a Land Commission of three members, four governors of the General Hospital, and such permanent or semi-permanent committees as may be necessary from time to time to perform special functions or conduct investigations.<sup>18</sup>

<sup>16</sup> Regulation IX.

<sup>17</sup> *Ibid.*

<sup>18</sup> Investigations authorized have included child labor, traffic control, municipal salaries, and the rickshaw problem.

## LEGAL STATUS AND COMPOSITION OF THE MUNICIPAL COUNCIL

The Shanghai Municipal Council, known officially as the "Council for the Foreign Community North of the Yang-king-pang," is the governing body of the International Settlement and as such derives its powers from the Land Regulations. Its composition was determined after the promulgation of the Regulations of 1854, and the code of 1869 set forth clearly the qualifications, powers, duties, and methods of nomination and election of councillors. These provisions have been little changed to the present time. Although the functions of the Council have expanded and its duties have been increased, this has been brought about within the framework of the 1869 Regulations.

The legal status of the Municipal Council is much like that of its counterpart in American cities. But it differs in one important respect. The International Settlement is not similar to the city which has a charter granted it by a competent superior governmental body. While the Land Regulations have been called the Settlement's charter, they were not granted by the proper governmental authority, in this case the Chinese government. Thus the International Settlement itself possesses no legal position under the law and is not a corporate entity, as are most cities. It is the Council<sup>19</sup> which has the right to acquire, hold, and dispose of property, which can sue and be sued in the courts, which can exercise the power of eminent domain, which, in other words, has a definite legal stand-

<sup>19</sup> Regulations XI, XIII, XIV, XXVI, XXVII.

ing. Council members or officials of the Settlement are not personally liable for acts committed in execution of the Land Regulations or for contracts entered into in pursuance thereof. The Council as a legal body, however, can bring actions in the proper courts and can be held liable for contracts entered into, etc.

Because of the system of extraterritorial jurisdiction established by the various foreign powers in China, it was necessary to create a special court for cases in which the Council was involved. For this purpose the Court of Consuls was established, in which the Council could sue and be sued. The "Court" consists of three members and a secretary appointed by the Shanghai Consular Body at the beginning of each year and in reality is not a court at all but merely a committee of the Consular Body. It may or may not be composed of men qualified to act as judges. The Court was provided for by the Land Regulations of 1869 but had no rules until 1882.<sup>20</sup> It still operates under these rules and the few cases before it have mainly related to claims against the Council.

The legal status of the Council has been questioned many times in the history of the Settlement, and, though this cannot be stated in exact terms, there seems to be no doubt as to the legality of the Council's position as the governing body of the Settlement. As long as the Land Regulations are assumed to be valid, then the acts of the Council can generally be considered valid if they conform to the Land Regulations and By-laws. Precedent and tradition have played an important part in giving the

<sup>20</sup> Text of Rules in Shanghai Municipal Council, *Annual Report*, 1881-82.

Council its present position in the Settlement government, and the courts have generally upheld its status.

The Land Regulations make provision for a Council of not more than nine nor less than five members, and until 1928 the Council consisted of nine foreigners, chosen by the foreign electors. In that year three Chinese members were added to the Council, and in 1930 this number was increased to five, bringing the total number of councillors to fourteen.

The Chinese councillors are elected through the medium of the International Settlement Chinese Ratepayers' Association. This Association provides for the selection of an election committee of eighty-one members, who elect the Chinese councillors. This election committee consists of twenty-seven delegates chosen by the Nantao and Cha-pei Chambers of Commerce, twenty-seven delegates of the Chinese Ratepayers' Association, and twenty-seven delegates of the various guilds and street unions in the Settlement.

The foreign councillors are elected by the qualified foreign voters from a list of candidates nominated by a proposer and a seconder, both of whom must be foreign ratepayers qualified to vote. Polling lasts for two days. Ballots are secret but must be signed. Voters must vote for at least one candidate and for not more than nine. If only nine candidates are nominated, they are declared elected unanimously, and no formal balloting is held.

The term of office for the Council is one year, and since there is no bar to re-election many of the councillors have served for long periods or have been re-elected after a lapse of one or two years. The newly elected Council takes

office immediately after the accounts of the expiring Council have been accepted by the ratepayers in their annual meeting, and it remains in office until its own accounts have been passed upon a year later. Vacancies which may occur are filled by the Council itself, providing they do not exceed three in number at any one time, in which case a special election is held.<sup>21</sup>

Theoretically the foreign councillors are chosen to represent the foreign community as a whole and not national groups within the community. Actually the councillors are chosen on the basis of according representation to the dominant business groups in the Settlement. This is true also of the selection of Chinese councillors. (Historically British business has had a dominant position in Shanghai and five of the foreign councillors have always been British. The other four foreign seats have been divided among the other most prominent foreign business interests. Prior to the World War the Council included men of German, Austrian, Italian, and American nationality. Since the war, with one or two exceptions, two seats have always been filled by Americans and two by Japanese nationals.<sup>22</sup>)

The fact is that the Council has always been representative of commercial and financial interests in the Settlement and this has conditioned its functions, its approach to municipal problems, and its emphasis upon certain aspects of municipal administration.<sup>23</sup>

<sup>21</sup> Regulations IX, X, XVIII.

<sup>22</sup> The problem of national representation and the growing influence of the Japanese will be examined in chapter xi.

<sup>23</sup> The members of the 1936 Municipal Council and their interests are: H. E. Arnhold, British, merchant, transportation; W. J. Keswick, British, merchant, Jardine, Matheson & Co.; Brig. Gen. E. B. Mac-

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ORGANIZATION AND POWERS OF THE MUNICIPAL COUNCIL

The Council's organization is neither extensive nor complex. A chairman and a vice-chairman are chosen at the first meeting of the new Council. The Secretary, a paid official, also acts as an administrative officer. Either the chairman or the vice-chairman presides. According to the Land Regulations three members constitute a quorum to do business, a majority of those present being necessary to any official action. Although the Secretary is usually present at most meetings, no verbatim record is kept of discussions or decisions. After every meeting, so-called "minutes" are published in the *Municipal Gazette*, but these are the carefully edited morsels to be fed to the ratepayers—actions which the Council wishes to acknowledge officially but which reveal little about the Council's policy or the attitude of the councillors. The electorate does not know what the Council is going to do, what its policy is, or what the councillors think on any subject unless the Council wishes to inform them or individual councillors wish to speak "off the record." Considerable agitation arose on the subject of secrecy of Council meetings in 1930 and numerous editorials appeared in the

Naghten, British, British-American Tobacco Co.; G. E. Mitchell, British, shipping, Butterfield and Swire Co.; H. Porter, British, trustee, Lester Trust—Director, *North China Daily News*; A. D. Calhoun, American, real estate, banking; C. S. Franklin, American, attorney; T. Urabe, Japanese, Mitsui Bussan Kaisha, textiles; T. Yamamoto, Japanese, shipping, Nippon Yusen Kaisha Co.; Singloh Hsu, Chinese, banking, real estate; Yu Ya-ching, Chinese, banking, textiles, shipping; William Gockson, Chinese, merchant, Wing On Co.; Yulin Hsi, Chinese, banking, Shanghai Bank; E. Y. B. Kiang, Chinese, attorney.

Shanghai papers denouncing the "autocracy of the Council." The result was the passage of a resolution by the ratepayers' meeting of that year calling for publicity of Council meetings. Since that time larger morsels have been fed to the ratepayers in the form of more extensive minutes published in the press, but the record is far from complete.

Broadly speaking, the powers of the Council are those which are granted to any ordinary municipal body. They are defined in the Land Regulations and relate generally to the execution of the Settlement's laws, and the expressed desires of the ratepayers, the making of ordinances, and the administration of the Settlement's affairs.

The Council has the power to make by-laws, which correspond generally to municipal ordinances, as they relate solely to the Council, its officers, or its servants. Otherwise the approval of the ratepayers and the Consular Body must be obtained, a sanction not always easily secured. In addition the Council has been given the power to promulgate a building code, to fix penalties for the violation of the by-laws, rules, or any municipal ordinances, and to make regulations for traffic, health, safety, etc.; and it has assumed the right from time to time to issue proclamations, having the effect of law, in cases of emergency. While the ordinance power of the Council is restricted to purely administrative matters, and while in practice it has been hard to obtain approval for by-laws which deal with wider problems, this has not prevented the Council from expanding greatly its functions under the "police power," particularly in times of emergency.<sup>24</sup>

<sup>24</sup> See discussion below in chapter xii, p. 265.

The administrative powers of the Council can be classified as they relate to (1) personnel, (2) taxation and finance, (3) public land and public works, and (4) general police powers. The Council has practically full power in the appointment, removal, and payment of all municipal officers. There is no limit to the number of officers which the Council may appoint, and it may create offices and abolish them at will.

The Council has the power to levy all taxes, dues, and rates provided by action of the ratepayers in their meetings. Assessment and collection of revenues are carried out under its direction. It also has the power to sue defaulters for arrears, "to obtain payment by such means as shall be authorized by the courts in which such defaulters are sued," and to take any legal or lawful means for collecting the amounts thus due.<sup>25</sup> The revenue derived from the sources mentioned must be applied for the purposes set forth in the Land Regulations, which in practice means according to the amounts authorized in the annual budget approved by the annual meeting of ratepayers. The budget system has been used by the Settlement government since the adoption of the 1854 Regulations. The Council may borrow money in the name of the municipality, either by outright loans or by the issuance of debentures guaranteed by it, provided, however, that the approval of the ratepayers has been obtained. The Council has generally followed the practice of issuing bonds to care for the municipal debt and has usually had no difficulty in obtaining the sanction of the ratepayers, as the amount of the issues has rarely been excessive.

<sup>25</sup> Regulation XIII.

Land for public use or for municipal purposes may be acquired by the Council upon payment of just compensation and after due notice and hearing. The Council is given the specific power to acquire land for roads in the Settlement and also outside the Settlement's limits. The exercise of the latter power has produced one of the most difficult problems of administration.<sup>26</sup> Land acquired for public use must remain dedicated to such purpose and cannot be turned back to private ownership without action by the ratepayers. The Council is specifically charged with the "construction of public works, and keeping the same in repair; and for cleaning, lighting, watering and draining the Settlement generally," and may construct sewers and drains when necessary. Under this power the Council has full control of all underground conduits, and has from time to time contracted for the lighting of the Settlement by gas and for the installation of electricity, and has constructed roads, bridges, wharves, jetties, public parks, incinerators, an abattoir, and the many buildings needed to house municipal activities. It has in the past also become the operator of various utilities, sometimes by outright purchase, as in the case of the electricity plant. The foregoing activities of the Council, especially the ownership and operation of utilities, have all been subject to approval by the ratepayers.

The "police power" of the Council is derived, first, from the clause in the Land Regulations which establishes a "Council, for the better order and good government of the Settlement"; second, from the clause stating that the purpose of the Council is "for carrying out the Regula-

<sup>26</sup> See discussion below in chapter x.

tions now made"; and, third, from the implied power, said to be inherent in all municipalities, to take any action necessary to the safety, public health, public morals, and general welfare of the community. The police power of the Council is further defined in the Regulations and By-laws relating to traffic, health, sanitation, issuance of licenses, and the power to make and enforce penalties for infringement of the Regulations and By-laws. The power to issue licenses provides the most effective means of regulating activities of individuals in the interests of public health, safety, or morals. By inference, also, the Council has assumed the power to act in emergencies. In numerous instances it has proclaimed a "state of emergency," which has the effect of martial law. Under this general proclamation, the Settlement area may be closed to traffic, a curfew rule is enforced, and the police and the municipal army, the Shanghai Volunteer Corps, patrol the streets and act in defense of the Settlement.

Although it would seem that the Council possesses a large degree of power, in practice there are definite limitations on its exercise. The ratepayers may call the Council to account for its actions and may give the councillors a vote of lack of confidence which normally would require their resignation.<sup>27</sup>

In addition, the Council's exercise of power is complicated by the system of extraterritoriality, by its limited jurisdiction within the urban area of Shanghai, by its ownership of roads outside the Settlement, and by its

<sup>27</sup> Such action was taken in the wheelbarrow controversy in 1897, but should be considered exceptional, as the ratepayers have generally approved the Council's action.

undefined relationship with the Shanghai Consular Body and the Diplomatic Corps at Peking. Neither the powers of the Consular Body in relation to the Settlement nor the scope of its action has ever been agreed upon. Under some conditions the Consular Body has worked hand in hand with the Council, while in other circumstances the two groups have been antagonistic to each other. A great deal depends on the personnel of the Council and the Consular Body and on the immediate political situation *vis-à-vis* China and the foreign powers. In many cases, however, since the Council represents the power of business groups in the Settlement, its views are accepted and its authority is not challenged.<sup>28</sup>

In spite of the criticisms that have been leveled against it, the Municipal Council possesses a number of worthwhile features from the standpoint of governmental structure. In the first place the relatively small size of the body is a factor making for efficient administration. In its relation to the administrative services of the Settlement, it exercises the true function of a policy-forming body, leaving the actual details of administrative work to be performed by a centralized and efficient civil service. Because of its small size, business can be conducted quickly and with a minimum of wasted discussion. The Council has at all times been a stable body, constantly representative of the business and financial interests for which the Settlement was primarily created. This stability has tended to minimize graft, and while special interests have

<sup>28</sup> Objections to actions of the Council are frequently voiced in the press, but only infrequently do they result in action and then only after concerted pressure by individuals or interested groups.

undoubtedly been favored, the material well-being of the Settlement's foreign residents has been equally well cared for. In addition, the Council has proved itself adaptable to changing conditions. When it is considered that the organic law has remained practically unchanged since 1869 while the Settlement itself has become a large industrial city and a world port, the Council's ability to cope with the change is seen to have been largely due to the nature of its representation and to the lack of sudden and frequent shifts in its membership.

During a period in which the Chinese government has been unstable, when revolution and war have been common, when markets and prices have been subject to conditions over which it has no control, the Shanghai Municipal Council has performed the task of governing the Settlement in a creditable manner.

#### ADMINISTRATIVE ORGANIZATION

The administration of the Settlement has developed gradually from a loosely organized group of offices into a set of compact, centralized departments organized along functional lines. The Council, the policy-forming body for the administration, is assisted by twelve committees appointed annually, which act in an advisory capacity to the Council and to the departments and assist in the preparation of the annual budget.<sup>29</sup> Ordinarily the councillors

<sup>29</sup> Council committees are: finance, watch, works, staff, public utilities, health, orchestra and band, library, education, rate assessment, land commission, board of film censors, and Victoria Nurses Home Administration. The Board of Education, the Rate Assessment Committee, the Land Commission, and the Rickshaw Board have administrative as well as advisory functions.

serve on all these committees with prominent Chinese and foreign residents of the Settlement.<sup>80</sup>

The administration is divided into the departments of Public Works, Health, Fire, Police, Education, Finance, and the Secretariat, and the smaller units of Orchestra and Band, Press Information, Chinese Studies and Translation, and Public Library. Each department is headed by a single executive directly responsible to the Council.

The foreign staff of the departments serves under a well-developed merit system, characterized by adequate pay, long-term contracts, and retirement allowances. Three weeks' annual leave and a six months' home leave every sixth year are granted. The reputation of this government as a "model settlement" has been due to the work of this well-trained staff, mostly British, who have been free from the usual kind of municipal politics and many of whom have served in the Settlement for over two decades.

Since 1925, as a result of Chinese demands for increased participation in the government of the Settlement, Chinese have been admitted to some of the higher administrative posts. In June 1931 a Chinese was appointed as Adviser on Municipal Affairs and another was appointed as Assistant Secretary. In September of the same year the Japanese, whose demands in Shanghai were becoming more urgent, also demanded and obtained the appointment of a Japanese Assistant Secretary, who assumed office in

<sup>80</sup> Chinese residents serve on all but the Victoria Nurses Home Administration. Every committee except the Land Commission, the Rickshaw Board, and the Victoria Nurses Home Administration includes a Japanese resident as a member.

January 1932. Thereafter almost every Chinese demand for additional participation in the municipal government has been followed by similar requests from the Japanese. For example, when the Chinese in 1932 requested and obtained the appointment of a Chinese Press Officer a similar request was made and obtained by the Japanese. A later important addition of Chinese to the government of the Settlement was made by an agreement for the selection of two Chinese members of the Land Commission, who took office in November 1933.

The effect of placing Chinese and Japanese employees in the higher branches of the service is still in doubt. A mixed staff presents many opportunities for misunderstanding, and unless the Chinese and Japanese who are given appointments are well trained in the concept of public service the efficiency for which the administration has been noted may be seriously impaired.

There is no chief executive with powers as such in the Settlement administration. The chairman of the Council is a non-salaried official, chosen by the Council itself at the first meeting after its annual election.<sup>81</sup> There are in addition, however, two officers, employed under contract on a full-time basis, with delegated administrative powers. These are the Secretary and the Secretary-General, respectively.

The first Municipal Secretary was a clerk appointed by the Council in 1854 at \$50 per month.<sup>82</sup> It is said he was employed to straighten out the accounts of the preceding Council. By 1880 this office had expanded into a Secre-

<sup>81</sup> To date the chairman has been either British or American.

<sup>82</sup> Lanning and Couling, *The History of Shanghai*, p. 321.

tariat with the Secretary in charge, for the keeping of all matters of records and minutes. The Secretary has continued to act in the dual capacity of Secretary to the Council and head of the Secretariat, but his principal duty has been to supervise the work of the departments. This duty is not authorized by the Land Regulations but has been assumed. Its exercise depends on the personality of the Secretary and the willingness of the other department heads to co-operate, since all are equally responsible to the Council.

Following the World War the state of unrest in China accentuated the various problems arising between the Settlement authorities and the Chinese. The settlement of these problems, particularly the Chinese demands for a greater share in Settlement affairs, often led to protracted negotiations the burden of which generally fell on the Secretary and the chairman of the Council. This situation, together with the general expansion of the Settlement administration, led the Council in 1925 to create the post of Commissioner-General. It was stated that the duty of this officer would be to co-ordinate the activities of the various departments. In its original conception, this office was similar to that of City Manager in the form of government by that name in use in the United States. Major A. Hilton-Johnson, who had been on the staff since 1908, the first appointee, held the post for three years. After his resignation in 1928 the title of the office was changed to that of Director-General and the then chairman of the Council, Mr. Stirling Fessenden, an American, took over the duties of Director-General concurrently with his position as chairman. After a year, Mr. Fessenden gave up his

Council position in order to devote his whole time to the work of the Settlement government and the title of the office was changed again to that of Secretary-General.

The work of co-ordination, however, which the Council had in mind in creating the office has not been carried out. Such co-ordination as is achieved comes through the office of the Secretary, since political problems have consumed most of the time of the holder of the other position. The Salaries Commission reported that "The object which the Council had in view when the appointment was created, viz., that he should be chief executive-business officer of the Council, for the purpose of consolidating its various activities, has not been achieved."<sup>88</sup>

The administration, therefore, is still without a chief executive with clearly defined powers. Actually there are three officers—the chairman of the Council, the Secretary, and the Secretary-General—who assume some of the duties of this position but without authority under the Land Regulations. The Secretary gives much of his time to the task of co-ordination, while the Secretary-General gives most of his time to dealing with the various political problems confronting the administration. In practice the three officers mentioned may all be engaged in political matters, while at times matters of internal policy and administration may occupy most of their attention. That the Settlement government works efficiently and without discernible friction under such a scheme of divided responsibility is due largely to the co-operation of the present

<sup>88</sup> See Report of the Salaries Commission, *Municipal Gazette*, August 23, 1930.

encumbents of these offices. Their successors may act differently, and in that case the Council will undoubtedly make whatever changes are thought necessary to cope with the new situation, just as it has always done in the past.

It is not the purpose of this study to undertake detailed descriptions of the organization and work of each municipal department. The annual reports of the Municipal Council, models of statistical and graphical summaries, contain a large amount of this kind of information. Each department, however, has found its work complicated by the relationship of the Settlement to the French Concession and the Chinese areas and by the system of foreign rights and privileges. These difficulties of operation have often been grounds for anti-foreign criticism, and a brief description of the operation of the most important departments under these unique conditions will accordingly provide the background for the problems to be considered in Part Two of this study.

#### POLICE PROTECTION

The Land Regulations of 1845 provided for the establishment of a force of watchmen for the protection and good order of the Settlement. With only a few foreign residents, an organized force seemed unnecessary, but with the large increase in Chinese inhabitants in the 'fifties and 'sixties and the growth of the foreign population organized protection of life and property had to be achieved. The Municipal Council of 1854 therefore decided to spend \$15,000 (Chinese currency) on a police force. They sent to Hong Kong for a Mr. Clifton, an ex-army man, and borrowed \$12,500 (Chinese currency)

for the erection of police barracks despite severe opposition of the ratepayers.<sup>84</sup>

Many difficulties were encountered in the first few years, most of which revolved around the relation of the police force to the Council and to the consuls. The consuls were attempting at this time to assert their authority in municipal matters and were opposed to an autonomous Council governing municipal affairs. Conflict developed over the right of the consuls to control the police and use them for their own purposes, and the absence of a municipal court system raised numerous questions of jurisdiction as between the consuls, the Council, and the Chinese authorities.<sup>85</sup> Some of these difficulties were resolved on the establishment of the 1869 Land Regulations and the assumption of authority over the police by the Municipal Council. The force was gradually augmented as the Settlement developed, and Sikhs were brought from India to act as patrolmen and watchmen. Private Sikh watchmen were registered with the police to be called on for aid in times of unrest.

The present police force, numbering about four thousand, is organized under a commissioner of police directly responsible to the Council.<sup>86</sup> The department has adopted the practice of maintaining many of its force, especially the Chinese and Sikh police, with their families, in spe-

<sup>84</sup> Mr. Clifton's title was Captain-Superintendent of Police. He received about £500 annually and was to supervise the collection of garbage and refuse.

<sup>85</sup> See discussion below in chapter vi, p. 128.

<sup>86</sup> The department maintains a training depot where each new recruit must undergo a rigid course of training before being accepted.

cially constructed barracks adjacent to police stations. This frees the officers from fear for the safety of their families because of their work, and is a means of mobilizing a large emergency force on very short notice. The equipment is modern in every respect and both telephonic and radio communication is maintained between the central office and the stations, and radio-equipped vans cruise about the city.

The jurisdiction of the police extends to all the inhabitants of the Settlement, including the Chinese. The question of arrests, trials, and judicial procedure is complicated by the fact that foreigners possessing extraterritorial rights must be tried by their own consular courts while the Chinese must appear before the Shanghai District Court, successor to the old Mixed Court.<sup>87</sup> Formerly a prosecuting solicitor and several assistants were attached to the department to handle its cases, but there is now a separate Municipal Advocate's office which prosecutes police cases and takes care of all the legal business of the municipality.

To assess the value of police work in the Settlement, it is necessary to know some of the peculiar problems facing the police which are not to be found in ordinary cities of the same size. In the first place the geographic location of the Settlement makes police work and protection of citizens' lives and property particularly difficult. Settlement police control only part of a large urban area, with ingress and egress a matter of crossing a street in most places along the boundary. This situation naturally complicates the apprehension of criminals. Co-operation between the

<sup>87</sup> See below, chapters vi and vii.

Settlement police and the force of the French Concession is carried on quite well, but co-operation with the police of the Chinese municipality is full of difficulties arising from questions of jurisdiction and from political problems. Such co-operation is not a satisfactory substitute for actual control over the whole urban area.

Police work is also conditioned by the large industrial population, the tendency to lawlessness usually found in large seaports, the large number of nationalities to be dealt with, and the fact that the Chinese have not been brought up to regard police protection in the same light as do foreigners. In most cases the foreigner in trouble calls the police. The Chinese in trouble will not call the police if he can help it; the Chinese citizen prefers to rely on established methods of acting through his trade gild or family. A gradual educational process, however, has resulted in more Chinese relying on police protection as they become accustomed to Western methods.

On the whole, police administration has been efficient, and no serious charges of graft or corruption have been proved against the personnel. The action of the department and its officers in times of crisis, however, has occasioned severe criticism. This was particularly true of the incident of May 30, 1925. During a demonstration of Chinese labor groups on this date municipal police arrested some of the ringleaders and, followed by a threatening mob, took them to the Louza police station off Nanking Road. To save the station from capture the police fired into the mob, killing four Chinese and wounding twenty-five others, eight of whom subsequently died. Two investigations of the affair were conducted and the police

were severely criticized. The two officers most concerned were retired on pension, although Judge E. Finley Johnson, chairman of the Judicial Investigating Commission, stated that in his opinion the police had been negligent and their officers should have anticipated the trouble.<sup>88</sup> The whole affair was closely related to political problems beyond police control but the effect of the police action was to heighten Chinese nationalism and intensify Chinese demands for representation in Settlement affairs.

#### PUBLIC WORKS

The location of the first foreign business houses in Shanghai, excellent as it was because of proximity to the river and shipping, had certain drawbacks. Most of the Shanghai area consists of filled land and in 1842 was marshy and altogether unhealthful for foreign residence. The immediate need of the foreign merchants, therefore, was to provide adequate drainage, roads, and some sort of wharfage facilities. In 1849, the Committee on Roads and Jetties was formed under the British Land Regulations to take charge of this work. The ratepayers were to assist by giving their land, and funds were to be secured by the collection of wharfage dues. The Committee supervised the laying out of the first roads in the Settlement and the construction of a few wharves and stone jetties, and took up the problem of drainage. After 1854 the Municipal Council appointed a "Works Committee" to take over these functions. Soon it became necessary to

<sup>88</sup> International Commission of Judges, *Report of Proceedings* (Shanghai, 1925).

employ a full-time qualified engineer and surveyor to superintend road and wharf construction, drainage, and sewage removal.

Departmental organization was effected in 1907, and since that time the department has been headed by a commissioner directly responsible to the Council and assisted by a deputy commissioner. The work of the department is much like that of the average city department of its kind conditioned by some special problems peculiar to Shanghai and its environs.<sup>89</sup> The problem of drainage and disposal of sewage has been a continual source of trouble to the Settlement authorities. The presence of a large Chinese population without ideas of Western standards of health and sanitation has presented many difficulties. The Chinese inhabitants of the Settlement were accustomed to dispose of their refuse in the streams. Night soil was usually collected for distribution to the agricultural districts. The numerous creeks in and around Shanghai became the repositories of waste matter and sewage and were a constant menace to health. The department early began the practice of collecting house refuse in centrally located chutes and having it transported by boat to the agricultural districts, this disposal work being done by private contractors. Other waste matter was for a long time treated in plants in the Settlement and then sent

<sup>89</sup> The department's functions include the construction and maintenance of roads, bridges, wharves, and public buildings in the Settlement. Attached to the department is an architect's office where municipal plans are made and all plans for private construction are approved, also a cadastral office where surveys of all building lots are on file.

down river by boats to be dumped and carried out to sea. In the last three years the department has put into operation two municipally constructed incineration plants capable of disposing of some three hundred tons daily, which considerably simplifies the problem.

Difficulties of jurisdiction over Chinese have hindered proper inspection of buildings and general development within the Settlement. The benefits deriving from public works have accrued directly to the foreigners and only incidentally to the Chinese. Considering the limitations on its work, the functions of this department have been adequately performed and a standard for public service has been established of benefit to foreigners and Chinese alike.

#### HEALTH PROTECTION

The foreign merchants in Shanghai were mainly concerned with the protection of their lives and property. Health protection was held to be a private matter and not a government function. Early health conditions were poor, owing to stagnant pools, lack of proper drainage, and the unsanitary habits of the Chinese population.<sup>40</sup> At times the death rate was exceedingly high and there were frequent epidemics of cholera, smallpox, and typhoid. In 1854 the outgoing Committee on Roads and Jetties reported:

The Committee would also call the attention of the community to the custom of throwing garbage over the Bund in places where

<sup>40</sup> F. L. Hawks Pott, *A Short History of Shanghai* (Shanghai, 1928), p. 74.

it cannot be washed away by the tides, which thus accumulates, forming masses of decomposing animal and vegetable matters, which cannot fail of proving pernicious to health.<sup>41</sup>

The real cause of poor health conditions was ably stated in a guide to the treaty ports published in 1867. After explaining that Shanghai is subject to rapid changes of temperature, the author goes on to say,

So long as the European population was thinly scattered, living in well-built houses and composed for the most part of a wealthy class, the sanitary defects of the locality were unnoticed, but with the first appearance of a crowded and mixed population disease was rapidly germinated and Shanghai became noted for its unhealthfulness.<sup>42</sup>

After 1880 the Municipal Council employed a trained public health officer and a health department was organized. At first the department was mainly concerned with the control of disease, but it soon interested itself in matters of sanitation. At present the department performs a number of related functions. It collects health statistics, issues a monthly report, and circulates among health officers in Shanghai the weekly broadcast from the Eastern Bureau of the League of Nations' Health Section at Singapore. Health education among Chinese and foreigners is carried on, especially with regard to communicable diseases. The inspection of licensed premises, such as hotels, restaurants, bakeries, dairies, slaughterhouses, and markets, is part of its work. Both pathological and chem-

<sup>41</sup> *United States Senate Executive Documents*, 1858-59, 35th Congress, 2d Session, Correspondence with China, p. 138.

<sup>42</sup> N. B. Dennys, ed., *The Treaty Ports of China and Japan* (London, 1867), pp. 394-96.

ical laboratories are maintained by the department for purposes of investigation and research.

Hospital facilities for foreigners are adequate and the private hospitals caring for both foreigners and Chinese are supported partially by grants-in-aid from the Council. Two isolation hospitals, one for foreigners and one for Chinese, are maintained by the department, as well as clinics for tubercular and venereal diseases.

Much criticism has been leveled at the failure of the department to care properly for the million-odd Chinese in the Settlement. This is not a fair criticism, however, since the department has done its best on a limited budget to provide some health service for the native population. When one can stand on a busy street and see a health department van on one corner providing free vaccination service to the Chinese and on another corner an old Chinese man legally selling snake medicine which he draws from a large jar in which dead snakes repose in a colored liquid, it can be seen that much educational work is necessary among the Chinese. In addition to this aspect of the problem, the Commissioner of Health has stated that an adequate public-health program for the Settlement would cost over five times the present appropriation. Since any mention of increased taxes brings strong protests from both Chinese and foreigners it is not likely that improvements will be made in the near future.

Vital statistics are admitted by all health authorities to be inadequate. Recording of vital data is difficult in the foreign areas and has only recently been started in the Chinese city. Some indication of progress can be seen in the reports of the Settlement health department respecting

the death rate. The estimated death rate per thousand for the foreigners in the Settlement has decreased from 25 in 1880 to 11.3 in 1934 and for Chinese the rate has dropped from 30.9 in 1902 to 14.2 for 1934.<sup>43</sup>

In both the French Concession and the Chinese city, well-organized health departments exist with trained personnel, and co-operation in health matters has not been noticeably hindered by political interference or questions of jurisdiction.

It should be emphasized that in matters of health protection the foreigners and Chinese have demonstrated that it is possible to work together in striving for common standards. The Commissioner of Health in the Settlement in 1934-35 stressed this point as follows: "It is gratifying to record the many instances in which the labour of this department has been lightened by the co-operation and assistance of the Public Health Departments of both the French Municipal Administration and the Shanghai City Government in carrying out measures necessitating mutual effort."<sup>44</sup>

#### FIRE PROTECTION

The first volunteer fire company was organized in the Settlement in 1866 and the development of this protective activity has followed the course usual in other large cities. Prior to the date mentioned several business firms had maintained fire-fighting equipment in their buildings and there was one privately owned engine. The Volunteer Brigade organized in August 1866 was under the su-

<sup>43</sup> Shanghai Municipal Council, *Annual Report*, 1934, pp. 100 ff.

<sup>44</sup> *Ibid.*, 1934, p. 102.

pervision of the Municipal Council. Equipment consisted of hooks, ladders, and buckets, and each member had a key to the firehouse.<sup>45</sup>

The Council continued its supervision and financial support of the Volunteer Brigade until 1919, when its voluntary aspect was abolished and it became a municipal department. While the present equipment is modern, the efficiency of the department is impaired by the lack of a thoroughly up-to-date fire-alarm system and at times by the difficulty of obtaining sufficient water pressure. The absence of a modern fire-alarm system and the narrow streets and congested traffic prevent efficient fire control.

The department has the difficult task of fire control without adequate powers to enforce inspection laws. Improper storage of inflammable goods, for example, has caused many serious explosions and fires, with much unnecessary loss of life. Co-operation with similar departments in the French Concession and the Chinese city has not presented grave difficulties. Lack of unified control and political disturbances, however, have often prevented the proper functioning of the three departments. Progress in the direction of unified enforcement of safety regulations is a part of the major problem of industrial regulation which is to be discussed in Part Two.

#### EDUCATION

Until recent years education in the Settlement has been a relatively unimportant municipal activity. In the early

<sup>45</sup> Until 1891 Chinese coolies were employed to pull the machines. In that year horses were purchased and used until the introduction of motorized equipment after 1908.

days this function was left to the missionaries, who established mission schools and colleges in Shanghai, and later to private institutions set up by various national groups. The Council, however, recognized the public aspect of this function by adopting the practice of voting grants-in-aid to various private schools, beginning in 1864, and by undertaking to establish public schools for foreigners as early as 1866. It justified its expenditures for such educational purposes, for which it maintained there was no legal obligation, on the grounds of expediency.

Attempts to formulate an educational policy were made in 1911 and in 1922, in which years special commissions were appointed for this purpose. The report of the Commission of 1911 stated that "the Council is justified in spending the public money for educational purposes because uneducated or partly educated children are detrimental to the community."<sup>46</sup> However, the reports of both 1911 and 1922 emphasized the difficulties of universal education by a government without large funds at its disposal, and on this basis the Council eventually adopted a policy of limited public education for the Chinese. The education provided was to serve as an example to the Chinese community.

Prior to the 1911 report only one Chinese school had been in existence. In 1912 a second one was established, but a real program of Chinese education was not attempted until after the World War. The rise of Chinese nationalism and the changing attitude of the foreign community, particularly after the affair of May 30, 1925, resulted in a

<sup>46</sup> Report of the General Education Commission, 1922, *Municipal Gazette*, February 20, 1924, p. 59.

greater emphasis on education for both Chinese and foreigners. In 1930, as a result of the sale of the electricity plant, money was made available for a more extensive educational program and the Council appointed a Board of Education and later a Superintendent of Education.<sup>47</sup>

In 1931 the new Board of Education recommended an eight-year program to include such annual construction of new buildings that by 1938 there would be twenty-three schools for Chinese able to accommodate 7.5 per cent of the Chinese children of school age in the Settlement. An expanding program of grants-in-aid was also recommended. This program was adopted by the Council but with the understanding that funds would not be available after 1933 and that the whole policy was to be reviewed by the Council and the ratepayers in 1934. Since this date general retrenchment has made necessary a curtailment of the program.

At present there are eleven primary and secondary public schools for Chinese. These, together with 189 private schools receiving grants-in-aid, are able to accommodate only about three per cent of the Chinese children of school age in the Settlement. On the other hand, the five public schools for foreign children and the eleven private schools receiving grants-in-aid are able to care for practically all of the foreign children of school age in the Settlement. The question of increased grants-in-aid to Japanese schools has been of growing concern to the Japanese community. As a result of repeated requests, the Council, in

<sup>47</sup> Prior to this, educational matters had been supervised by the Council with the aid of two committees, one on foreign education and one on Chinese education. Both committees included Council members.

1935, approved a grant of additional funds to the seven Japanese schools receiving grants-in-aid.<sup>48</sup>

#### PUBLIC UTILITIES

The development of public utilities and of their relation to the Settlement government has run an interesting course. In the case of the electricity plant, municipal ownership provided the Settlement with a large annual source of revenue and was the principal factor in the maintenance of a low percentage of indebtedness. With respect to other public utilities, regulation through franchise agreements on a royalty basis and investment of small amounts of surplus funds in the shares of the companies have produced beneficial results.

The failure of a private gas company and a private electric light company to provide sufficient illumination of the streets and low rates to private consumers induced the Council to purchase the electric-light plant in 1893 and continue its operation as a municipal enterprise.<sup>49</sup> A continually growing demand for electricity for private use, for electric power, and for electric appliances enabled the Council to add to its plant, expand its enterprise, and show an increasing profit.<sup>50</sup>

In the latter part of 1928 there were indications that two private companies were desirous of buying the plant.

<sup>48</sup> Shanghai Municipal Council, *Annual Report*, 1935, p. 240.

<sup>49</sup> The purchase price to the Council was 66,100 taels.

<sup>50</sup> Net profits increased from tls. 38,619 in 1907 to tls. 2,292,554 in 1927. Return on capital outlay was reported as 10.45 per cent for this period. Over tls. 8,000,000 was contributed to the municipal treasury between 1916 and 1927.

Overtures were made to the Council and in the early part of 1929 it was decided to permit three groups to submit bids. The bids were opened in March and it was announced that the American and Foreign Power Company, a subsidiary of the Electric Bond and Share Corporation, a large utility holding company with some British capital, had bid the sum of 81,000,000 taels (about \$50,000,000 United States currency) for the whole plant. The next highest bid was from a group of affiliated British interests called British Trusts Associated, Ltd., and amounted to 51,000,000 taels. A third group offered to lease the plant for a flat rental of 2,000,000 taels per year on a profit-sharing basis. The three bids were considered by a special electricity committee appointed by the Council, which reported in favor of acceptance of the highest bid. This report was approved by the Council and recommended to the foreign ratepayers for final action. After much discussion and no little opposition, the approval of the ratepayers was obtained and the Council's most profitable utility undertaking passed into the hands of the Shanghai Power Company, which was organized by the American and Foreign Power Company for this purpose.<sup>51</sup>

The considerations which led the Council to recommend sale of the plant to the American concern were both financial and political. Under the terms of the agreement the Council was to receive annual installments of principal and interest on the purchase price over a period of years. This money was to be used to retire municipal debentures. The remaining amount of the purchase price, roughly one-

<sup>51</sup> Shanghai Municipal Council, *Annual Report*, 1929, pp. 16-17.

third, was secured by a mortgage on the plant and assets given in favor of the Council. In 1932 the agreement was modified at the request of the Power Company and the Municipal Council released the mortgage on the Company's assets and took instead a confirmed and irrevocable letter of credit on the Hong Kong and Shanghai Banking Corporation for the balance of the purchase price, which at that time amounted to 14,520,000 taels. The new agreement was to extend to December 31, 1933. The Council was able to report to the ratepayers' annual meeting in 1934 that the total purchase price for the electricity plant had been paid.<sup>52</sup>

Thus the Municipal Council was able to provide for the retirement of a large part of the municipal debt and for a considerable sum for public improvements. Some ratepayers argued at the time of the sale that the Council might have done better to accept the leasing agreement, thus retaining ownership of this valuable utility. Probably the political considerations involved influenced the Council as well as the ratepayers.

These political considerations are important in view of succeeding events. It has been said that after the Chinese Nationalist revolt in 1927, when the Treaty Powers sent large forces for the protection of the Settlement, the Council was given to understand that such protection might not be forthcoming in the future.<sup>53</sup> In addition to this consideration, the question of the future status of the Settlement was then in doubt. The Council, therefore, probably felt

<sup>52</sup> *Ibid.*, 1934, p. 9.

<sup>53</sup> *Ibid.*, 1929, p. 16; also *North China Herald*, April 6 and 20, 1929.

that it would be better to sell to a foreign firm, since otherwise it might pass to the direct control of the Chinese if the Settlement should revert to China. This is substantiated by the following statement of the Electricity Committee in recommending the sale:

In view of the possible future changes in the status of the Settlement, the Committee is strongly of the opinion that the Electricity Department should be safeguarded from all possibility of interference. The Committee therefore desires the Council to realize that the underlying motive in recommending the sale outright was that it considered it to be the best interests of the Council and the Community that the department should be placed in such a position as to enable it to function independently of political and other influences.<sup>54</sup>

There was also the feeling on the part of some members of the community that sale to an American company would increase the interest of the United States in the status of the Settlement and thus generally strengthen the position of the Treaty Powers with respect to Chinese attempts at rendition. During the Sino-Japanese hostilities of 1932 this additional American investment in Shanghai undoubtedly heightened American interest in the possible consequences of this trouble.

With respect to the other public services such as water supply, telephones, and transportation, the Settlement authorities have allowed their operation by private companies under franchise agreements. These agreements specify a percentage royalty payment to the Council and these payments, together with the dividends from shares in

<sup>54</sup> Shanghai Municipal Council, *Annual Report*, 1929, pp. 16-18; and *China Weekly Review*, April 6, 1929.

these companies owned by the Council, have provided the Settlement with additional revenue.

In this connection, the Council has retained a considerable degree of control over the various private utility companies. In 1928, for example, a new franchise was granted the Shanghai Waterworks Company which stipulated that the management of the company must be acceptable to the Council and that two of the directors be appointed by the Council. The Council also retained the right, in this case, to approve the Company's rates and to purchase the plant whenever it was deemed desirable. This last clause was apparently included in order to allow the Council to buy the Company in case there was any danger of its falling into Chinese hands. A somewhat similar arrangement obtained in the case of the telephone company until 1929, when it was purchased by the International Telephone and Telegraph Company and a new joint franchise was granted by the Settlement and the French Concession.<sup>55</sup>

Although consumers have frequently protested high rates, and still do so, the operation of utilities by private companies has proved beneficial to the whole urban area rather than to any one of the three municipalities, since a private company can extend its services throughout the whole area by means of franchise with each of the three city governments, without implying an extension of the municipal authority of one of these areas into the others.

The sale of the electricity plant to a private concern and change in ownership of the telephone company with in-

<sup>55</sup> Shanghai Municipal Council, *Annual Report*, 1930, pp. 11, 329; 1931, p. 78; also *China Weekly Review*, June 7 and 27, and August 9, 1929.

creased services to the French Concession and the Chinese city have removed one source of friction among the three municipalities. While the Council has been forced to take action in the matter of water and telephone rates, and some difficulty was encountered over the appointment of experts to investigate these rates, no serious questions have arisen. Private ownership of utilities, therefore, now presents no great impediment to the rendition of the foreign areas to China when that shall become practicable or necessary.

#### TAXATION AND FINANCE<sup>56</sup>

The Settlement operates on an annual budget made up by the departments with the assistance of the advisory committees of the Council. The final budget, when approved by the Council, is presented to the ratepayers at their annual meeting and is usually passed without much debate.

Under the Land Regulations the Council is given the power to levy an "assessment in the form of a rate on land or buildings," to collect wharfage dues on all goods

<sup>56</sup> Settlement and Concession finances, as well as ordinary business transactions in Shanghai, have been reckoned in taels (abbreviation tls.). The term tael signifies a weight and also a medium of currency in silver. The Shanghai tael used as money of account has varied from sixty-five to eighty cents United States currency, and can be taken at about seventy-five cents in calculating figures quoted herein. In 1933 the Chinese government abandoned the use of the tael as money of account and substituted the Chinese dollar, which had been widely used in cash transactions. The Municipal Council and the similar body in the French Concession have since then published their accounts and budget estimates on this dollar basis.

landed at any place within the Settlement, and to levy taxes in any other form necessary for municipal purposes. The use of a tax on the assessed value of buildings and rentals has been the method adopted to get around the problem of taxing Chinese residents of the Settlement. This form of taxation has been upheld in spite of protests as to its legality.

There have been six principal sources of revenue in the Settlement: (1) Taxes on land within the Settlement limits; (2) taxes on occupied buildings within the Settlement limits; (3) special taxes on Chinese and foreign holdings outside the Settlement limits which receive municipal services; (4) wharfage duties; (5) license fees; (6) revenue from municipal undertakings and contributions from public services. Revenue from these and from other minor miscellaneous sources has not always been sufficient to meet expenditures, and the Council has borrowed money from time to time to meet deficits. Such borrowings have been comparatively small owing to the profits from the electric-light plant and from the sale of this plant to a private concern.

The land tax is based on a percentage of the assessed value of land within the Settlement. Re-assessment takes place every three or four years and is carried out by special "rate assessors" appointed by the Council. This levy, which was four-tenths of one per cent in 1880, is now seven-tenths of one per cent on the assessed value of land in the Settlement. Revenue from this source averaged one-fourth of the total revenue from 1926 to 1936.<sup>57</sup> The

<sup>57</sup> Statistics calculated from the financial reports contained in the *Annual Reports* of the Shanghai Municipal Council.

general municipal rate is levied on all occupied buildings in the Settlement. Municipal and government buildings are exempt. Foreign and Chinese buildings outside the Settlement receiving municipal services were subject to this rate until 1920, when a special rate, slightly lower, was established for this type of property. The general and special rates are based on the assessed rental value of buildings and are the same for Chinese and foreigners. The general rate has risen from eight per cent in 1880 to fourteen per cent at present. The special rate is now twelve per cent. The revenue from these taxes has been slowly decreasing but in the ten-year period since 1926 accounted for an average of forty-five per cent of the total.

Wharfage dues are collected through the Shanghai office of the Chinese Maritime Customs Service and have provided an average of four per cent of the total revenue for the last ten years. License fees account for an average of thirteen per cent of the total for the same period. The remainder of the revenue has been received from miscellaneous sources, the profits from municipal undertakings and security issues. Settlement income has increased by thirteen times in the last twenty years, and ordinary income from all sources amounted to \$25,932,214 (Chinese) for the year 1934-35.

Distribution of expenditures has varied as the departments have expanded. Police protection and public works have received the largest average allotments. In the period 1926 to 1936 the average was thirty-seven per cent for police and twenty-three per cent for public works. For the same period expenditures for health protection, fire protection, and education averaged seven per cent, four per

cent, and six and one-half per cent, respectively, of the total. The budget figures for the years 1931 to 1934 reveal considerable increase in expenditures for police protection and education. This was made possible by the extra income from the sale of the electricity plant.

The financial administration of the Settlement, on the whole, compares more than favorably with that of most large cities, and there appears to have been none of the financial "juggling" or outright misappropriation of funds which has been frequently uncovered in other cities of the same size. Employment of a trained staff on long tenure, together with adequate budgeting and accounting methods and a general feeling of responsibility on the part of the Council to the ratepayers as regards finance have combined to give the inhabitants of the Settlement little cause for complaint.

The chief criticism of the Council's financial policy, to which allusion is frequently made in meetings of the ratepayers and in the local press, is the fact that the Chinese contribute well over fifty per cent of the municipal income but do not receive a proportionate share of the benefits of municipal services. This is particularly true in the matter of public health and education. A study of the itemized expenditure for these services in the past twenty years shows conclusively that the expenditure for foreign education and for maintaining proper health conditions for foreigners has greatly exceeded the expenditure for the same purposes for Chinese. This has been partially remedied by the Council's program for Chinese education in the Settlement, but the recent economies leave the program unfulfilled and with still much to be desired.

However, the Chinese point of view has to be considered, and because of the extent of their contributions they possess a powerful weapon to enforce their demands. If the Chinese were to refuse to pay taxes, the Settlement administration could not function. That this weapon has not yet been used to any extent is largely due to the identity of business interests between the tax-paying Chinese and foreigners.

The administration of the International Settlement, as indicated in the foregoing discussion, has been, on the whole, efficient, well organized, and certainly free from many defects found in other large cities. If criticisms are analyzed they will be found to concern matters of policy or questions of Sino-foreign relationships and not for the most part the functioning of the various departments of the Settlement government.

The policy of the Council has at least been consistent over a long period of years in operating the government on the theory that protection and prosperity of foreign business should be the first consideration. Practically all Councils have been wholly representative of these interests and it could not be expected that they would unselfishly prejudice their own future to provide somewhat dubious benefits for a mass of Chinese who they felt had neither the background nor the education to appreciate Western advantages.

In the postwar period, a somewhat more enlightened policy has been adopted. Chinese have been slowly admitted to some of the higher posts in the Settlement administration. The Chinese residents of the Settlement have been made the objects of benefits more in proportion

to their contributions to the municipal treasury. Nevertheless the governing group, which now includes Chinese, operates on the old theory, and although somewhat more enlightened the present policy savors of benevolent patronage rather than of a broad conception of the social and economic functions of government. As in any city government in a capitalist state, business in Shanghai will be cared for first and the benefits to the masses of the people will be incidental and vicarious. This policy will continue as long as the administration of the Settlement is based on the present scheme of things. Nor is there likely to be any change in fundamental policy when eventual rendition takes place. The only change one can foresee is a change in control from a foreign business group to a Chinese business group with the same standards and the same conception of themselves as the privileged classes. This pessimistic outlook is based upon the fact that there is hardly a city in the world in which the masses of the people are living under worse conditions and are being exploited to a greater degree than in Shanghai. This is only incidentally due to the existence there of the foreign settlements. It is primarily due to the policy of the controlling group, as has been set forth above.

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## CHAPTER IV

### THE FRENCH CONCESSION

**T**HE French Concession is important primarily because it is a foreign-controlled area free from Chinese jurisdiction. In contrast to the International Settlement, the French Concession is not important for its commerce, which is small, or for its industries, which are negligible. Several factors have combined to prevent the Concession from rivaling its neighbor to the north. First, although the area delimited by the early French Consuls was advantageous at the time, there was no room for it to expand along the river. Bounded by the International Settlement to the north and the old Chinese city to the south, the French were able to acquire only 3,800 feet of water frontage in contrast to the 31,000 feet of the International Settlement. As the commerce of the port expanded merchants gravitated to the superior locations in the larger area of the International Settlement. Although the French obtained a large western extension in 1914, it was several miles away from the river and the business district, and was suitable primarily for residential purposes.

The second factor which prevented the Concession from becoming a business center was the fact that until the extension of 1899 was granted the French Consul controlled the registration of title deeds in the Concession, with the result that French merchants were given the most desirable sites. Therefore other foreigners preferred the

International Settlement, where they could register their deeds through their own consulates and be given more nearly equal opportunities.

Nevertheless, the French Concession, which with its extensions contains 3.9 square miles, was not wanting inhabitants. It became for many people a place of residence and refuge. The quiet avenues of its western district were made more fashionable when the American school and American church were moved there after the World War. Many foreigners and Chinese took up their residence there to escape the congested areas of the International Settlement and yet to be under foreign protection.<sup>1</sup>

As a place of refuge, however, the Concession has been still more popular. Hundreds of Russians, unsympathetic with the Communist regime, gradually drifted down from Harbin and Peking in search of a living. Many Koreans, fleeing their native country, have made the Concession their temporary or permanent home. In addition, thousands of Chinese have come to appreciate the value of the Concession as a place free from the jurisdiction of the Chinese government. Here the war lord who has invested his ill-gotten gains in Shanghai real estate or deposited his silver in a foreign bank may enjoy the comfort of his home reasonably protected by the French police. Here, too, the

<sup>1</sup> Population, 1935 (estimated), from Shanghai Municipal Council, *Annual Report*, 1935, p. 129:

	Foreign	Chinese	Total
French Concession .....	18,899	479,294	498,193
International Settlement .....	38,915	1,120,860	1,159,775
<b>Total</b> .....	<b>57,814</b>	<b>1,600,154</b>	<b>1,657,968</b>

Chinese politician may find safe headquarters when the tide of politics turns against him. These residents and refugees, French business men and their families, and the masses of Chinese make up the half-million population of the Concession.

In addition to its residential character the Concession has been noted as a center of Shanghai's gayest night life. The busy Shanghai resident who wishes to forget his cares can find almost any kind of amusement under French jurisdiction. Dog-racing and every kind of sport, dancing and every kind of entertainment, are carried on under license of the French authorities. Here too are found many activities of a less savory character, for the Concession has been noted as a headquarters for gangsters, racketeers, opium smugglers, and strikebreakers, and the Concession has always derived a part of its revenue from licensed prostitution.

#### LEGAL BASIS OF THE CONCESSION

The term "concession" when applied to the French area is to a certain degree a misnomer. Foreign settlements in China are of two types. International settlements are those areas set aside by agreement between the foreign consuls and the local Chinese officials within which foreigners may rent land from the Chinese owner, paying an annual ground rent to the Chinese government, and registering title deeds both in their own consulates and with the proper Chinese authorities. The land-renters elect a governing body and approve tax levies. The International Settlement at Shanghai and the general foreign settlement of Kulangsu (Amoy) are the only foreign areas in this cate-

gory. National concessions, on the other hand, are areas directly granted on perpetual lease by the Chinese government to a single foreign nation, several nations being granted concessions in a single treaty port. The foreign state, through its consular representative, assumes administrative control over the area, and acts as landlord by subleasing land within the concession under whatever rules may be drawn up. In British concessions some measure of self-government has usually been allowed, while in the other foreign concessions the consular representative has usually retained complete administrative control over the grant. National concessions as described above are found in the principal treaty ports of Canton, Hankow, and Tientsin.

The status of the French Concession in Shanghai is not quite that of an international settlement or a national concession. It is similar to an international settlement in its origin. It was not a direct grant by the Chinese government to the French government but resulted from agreements between the French Consul and the local Chinese officials. Within the areas thus delimited before 1899, however, the registration of foreign title deeds was generally controlled by the French Consul, as explained in chapter ii.<sup>2</sup> In the extensions of 1899 and 1914 it was stipulated that the renting of land by any foreigner in these extensions could be effected through registration of

<sup>2</sup> See Great Britain, *Accounts and Papers*, Vol. CIX, China No. 1 (1899). Memorandum of B. Brenan, p. 268, for discussion of conditions upon which the 1899 extension was granted. It has been stated that there are a few plots of land in the older French areas the title deeds of which were never registered in the French Consulate.

the deeds in his own consulate. Thus the procedure for renting land in the French Concession before 1899 was similar to that found in national concessions, while after 1899 the procedure was the same as in an international settlement. In one other respect the French area resembles a national concession. The centralized control exercised by the French Consul-General is similar to the control exercised by the Consul in most concessions.

#### MUNICIPAL REGULATIONS

The establishment of the Concession and its separation from the International Settlement has already been described. This separation was made complete by the issuance of *Règlements* in 1866 similar in content and composition to the Land Regulations of the International Settlement.<sup>3</sup> These *Règlements* were amended in 1868 and additional modifications have been made from time to time, most recently in 1927 and 1929. Basically, however, this code has been changed little since its promulgation.

With respect to the legality of the *Règlements* the same arguments apply as to the Land Regulations, with one possible exception. The extension of 1914 was negotiated directly with the representatives of the newly formed Chinese Republican government.<sup>4</sup> Since by this agreement the Chinese government directly approved the application of the *Règlements* to this extended area, the code may be

<sup>3</sup> Text of *Règlements Municipaux* in *United States House Executive Documents*, 1867-68, 39th Congress, 2d Session, Part I, Correspondence with China, No. 1. Revised *Règlements* published by the Conseil d'administration municipale de la concession française de Changhai (Shanghai, 1931).

<sup>4</sup> See discussion below in chapter x, p. 210.

said to have a somewhat more valid sanction than have the Land Regulations. Nevertheless, the *Règlements* have their origin in the same indefinite and vague treaty provisions as the Land Regulations. The *Règlements* have been supported by force and could be invalidated in the same manner by a strong Chinese government.

The *Règlements* define the powers of the municipal government and the position of the French Consul-General in that government. This official has the power to issue *ordonnances consulaires* similar to the By-Laws of the Settlement. The amendment process is less complex than that for the Land Regulations. Changes in the *Règlements* may be made with the approval of the French consular representative, the French Minister to China, and the Paris government. Since Chinese governmental approval is not necessary, changes have been easily made, in contrast to the difficulties of amending the Land Regulations.

#### CONCESSION GOVERNMENT

In form, the government of the Concession would seem to resemble that of the Settlement. This is but a superficial resemblance, however, for in fact the government is almost wholly under the control of the French Consul-General for Shanghai.

In theory a Municipal Council was established, similar in composition to the Council of the Settlement. Originally it consisted of four French and four foreign councillors chosen for a two-year term, half elected annually, plus the French Consul-General. The French thus controlled a majority of the Council. Councillors were elected

on much the same basis as in the Settlement. Property qualifications for both voters and councillors were stipulated. In the revised code of 1868 there was a provision for the appointment of Chinese representatives to the Council, but this remained inoperative until 1914. In that year, Chinese representation was made a *quid pro quo* of extension and two Chinese were appointed in a consultative capacity.<sup>5</sup>

In 1927, as a result of Chinese Nationalist agitation, the regulations were amended to provide for the appointment of three additional French councillors and three Chinese councillors by the Consul-General.<sup>6</sup> This increased the total membership of the Council to fifteen, eight of whom are French. The amendments also provided that additional foreign and Chinese councillors might be appointed with an equal number of French members on approval of the French Minister in Peking. The inclusion of Chinese on the Council has provided a medium for consulting the Chinese community on various questions but does not give them any real voice in the administration.

Technically the Council is the governing body of the Concession; in reality it acts in little more than an advisory capacity. No decision of the Council is effective until signed by the Consul-General, who may veto any

<sup>5</sup> See chapter xi, p. 242.

<sup>6</sup> The Chinese members of the Council are nominated by the Chinese Ratepayers Association of the Concession, a body similar to that in the International Settlement. This organization has also continued to nominate the Chinese members of the Provisional Commission.

action he sees fit. His veto is final on approval of the French Minister. The Council has little control over the finances of the Concession or over the municipal departments and has no control over the police.

Although at present the Council is not much more than a consultative committee and the residents of the Concession take little interest in the government, this situation has not been unchallenged. The first Council was appointed by the French Consul in 1863 before the promulgation of the *Règlements*.<sup>7</sup> Difficulty was experienced in obtaining sufficient revenue, and the annual meeting of ratepayers expressed dissatisfaction with the administration. In 1865 the Council was dissolved by the Consul amid numerous complaints. The chief reason for this dissolution was that the Council had attempted to exercise executive power in defiance of the Consul, who did not believe in admitting the ratepayers to a share in the Concession government.<sup>8</sup> The *Règlements* of 1866, giving wide powers to the French consul, occasioned further criticism. Ratepayers protested that no Council was formed for over a year after this code went into effect and that no financial statements had been issued by the administration. Under fire of this criticism the French Consul convoked a meeting of ratepayers in 1867 and permitted them an opportunity to air their grievances.<sup>9</sup> Those present objected strenuously at having no voice in Concession affairs. They demanded the right to appear at meetings when the budget was being discussed, and attempted to pass resolutions invalidating the acts of the French Consul. These attempts

<sup>7</sup> *North China Herald*, May 21, 1863.

<sup>8</sup> *Ibid.*, October 14, 1865.

<sup>9</sup> *Ibid.*, May 18 and 23, 1867.

of the ratepayers to establish the right of participation in the government failed and similar attempts in later years were no more successful. From almost the beginning, therefore, the French consular representative has maintained his control of all affairs in the French area.

The French Consul-General for Shanghai, then, occupies the position of chief executive and administrative officer for the Concession government. In addition to his veto powers noted above, he has complete control of the police, and the order and security of the Settlement are in his hands. He may call upon the French troops, now stationed permanently in the Concession, for aid in time of emergency and he may decree martial law, an effect similar to the state of emergency which may be declared by the Settlement Council. He also has the power to include items in the budget with the approval of the French Minister, and may appoint and dismiss the employees of the Concession administration. His largest grant of power is found in the right to suspend or dissolve the Council in case of emergency. In such cases he may appoint a provisional commission to take its place—a purely advisory body. Although such a provisional commission is supposed to be appointed for no longer than six months, there is no way in which the Consul-General can be forced to dissolve it and call for a regular Council election, since meetings of the ratepayers can be convoked only on his order.

In 1927, the Municipal Council of the Concession was dissolved and a Provisional Commission was appointed in its place. This action was taken because of the emergency created by the Nationalist revolution and the consequent

unrest in the Shanghai area. Although the emergency passed, the Provisional Commission has continued to function to the present time. This means that the governing body is now appointed by the Consul-General. However, its present composition and advisory duties are the same as those of the former Municipal Council.

The only limitations on the powers of the Consul-General are the requirement for the approval of most of his acts by the French Minister and the French government and whatever practical considerations he may recognize. Subject to the approval of his superiors, the Consul-General does what he and his advisers consider expedient. As a result this office is said to be one of the most sought after in the French consular service.

The whole character of the government of the Concession was aptly described in 1866 by S. Wells Williams, Secretary of the American Legation in Peking, when the *Règlements* were first published. He wrote :

The characteristic feature of French rule, great centralization, is apparent in every article, and indeed, one is a little puzzled, after reading them over to know what the Consul cannot and what the Council can do, for the former is everything and without him the latter is nothing. He convokes it when he likes, suspends or dissolves it when he pleases, and then nominates a provisional council for three or six months which seems likely to be seldom needed, however, for he can veto or suspend every act it passes, until he reports to the French Minister at Peking, and finally the police is placed under his sole control.

. . . . It is premature to express an opinion as to their [the *Règlements*'] working among such a heterogeneous community as are nominally living under the control of the French Consul-General at Shanghai, for the whole depends upon the personal character of this functionary.

The French government disclaims all intention to encroach on the rights of other nationalities, but one must be permitted to doubt whether such a system of government as is here drawn up will work harmoniously in the midst of those nationalities and alongside of a free and effective municipal consular jurisdiction. The problem will be an interesting one if it does not become hazardous or dangerous.<sup>10</sup>

#### CONCESSION ADMINISTRATION

Again it must be stated that it is not the purpose of this study to provide a detailed description of administrative departments. For the French Concession, annual reports similar to the large volumes issued by the International Settlement provide statistical information of a routine nature. Since the administrative divisions of the Concession are quite similar to those of the Settlement, here will be given only a brief sketch sufficient to provide the background for the discussion in Part Two.

The administration consists of the departments of Public Works, Health, Fire, and Police, and the very valuable Meteorological and Semaphore service. Each department functions under a single administrative officer appointed by the Consul-General with the advice of the Provisional Commission. The Public Works department supervises construction of public buildings, roads, and drainage facilities. It carries on inspection of buildings and provides for refuse disposal. Attached to the department is a cadastral office where surveys of all building lots are on file, and connected with this work is a Land Commission which has charge of cases of expropriated land. The

<sup>10</sup> *United States House Executive Documents*, 1866-67, 39th Congress, 2d Session, China, No. 36, pp. 328 ff.

Health Department is almost the counterpart of that in the Settlement and functions as effectively on its smaller budget. Some attempt is made to care for the health of the Chinese population of the Concession through a free vaccination service and through the control of communicable diseases in co-operation with the departments of the Settlement and the Chinese city. The Fire Department is maintained with modern equipment, and telephone alarm boxes connected with the stations in the Settlement are located on the principal streets.

The Police Department is under the sole control of the Consul-General. It performs the usual protective functions and employs Annamites, Tonkinese, and Chinese on the force. In time of emergency there are available two special companies, one French and one Russian, and the regular troops of the French army stationed in the Concession may be called upon for aid.

There are two peculiar problems confronting the police, both resulting from a concentration of political refugees in the Concession. The largest group of refugees is Russian, many of whom are criminals or become criminals in an effort to maintain themselves. The police records of both Concession and Settlement show that a large percentage of reported crimes involve members of this nationality and, since most of them live in the Concession, the burden of crime prevention falls on the French police. The Korean refugees present an entirely different problem, which has become more serious in the last few years. Most of the Koreans are political refugees but are still legally Japanese subjects. Since 1932 the Japanese have insisted that the police of the Concession turn over any

wanted Koreans for punishment under Japanese laws rather than permit them to be tried in the courts of the Concession, and more recently have asked the French authorities to permit their consular police to arrest Koreans within the Concession. This raises an international problem which has not yet been settled.

The department maintains a political intelligence service to enable it to deal with agitators and prevent serious trouble arising from mob action. Because of the lack of industry on any large scale in the Concession, the French police have not had to deal with many strikes and labor disputes, but trouble in the International Settlement or the Chinese territory usually brings repercussions among the Chinese population of the Concession, and unless preventive measures are taken riots are likely to occur. It is generally admitted by most careful observers in Shanghai that illegal activities of all sorts are carried on in the Concession without much interference by the police, and allegations of graft and corruption have been made far more often against the French administration than against that of the International Settlement. The arbitrary control of the French Consul-General over the police makes convictions for graft and corruption dependent on the honesty and ability of that official.

The educational facilities of the Concession are only partially adequate for foreigners and wholly inadequate for Chinese. In general the French authorities like those of the Settlement have maintained that they were under no legal obligation to provide public education, and that it is a service to be performed according to the funds available. They support three schools, which admit Chinese and for-

eigners and which care for about two thousand students.<sup>11</sup> There is no indication of any expansion of this program in the near future.

There is one additional service performed by the Concession government which is of great value to Shanghai as a whole for the proper maintenance of the port. This is the weather-forecasting service supported by the government and operated in conjunction with the Zikawei observatory, a Jesuit institution. This service issues meteorological bulletins daily, with more complete reports weekly and monthly, and maintains a semaphore on the Bund where weather signals provide continuous information for incoming and outgoing ships.

The annual revenue and expenditures for the Concession have averaged between one-fourth and one-third those of the Settlement.<sup>12</sup> Since 1931, revenue has decreased as a result of the depression; and, as in the case of the Settlement, the Concession government has had to adopt a policy of retrenchment. As a result, departments have been consolidated and general economies instituted. Borrowings have been resorted to on numerous occasions to meet annual deficits.

Sources of revenue are similar to those of the Settle-

<sup>11</sup> See Conseil d'administration municipale de la concession française de Changhai, *Compte-rendu de la gestion pour l'exercice* (Shanghai, published annually).

<sup>12</sup> Computed from the reports of the Municipal Council of the French Concession, previously cited. Estimated revenue, 1935, in Chinese dollars: Ordinary revenue, \$9,792,192.51; Extraordinary revenue, \$3,510,874.32. Estimated expenditure, 1935, in Chinese dollars: Ordinary expenditure, \$9,789,527.28; Extraordinary expenditure, \$2,967,389.

ment. Taxes on the assessed value of land and the assessed rental value of buildings accounted for an average of fifty-five per cent of the total revenue from 1928 to 1934. License fees produce the next largest amount, and miscellaneous sources plus borrowings make up the balance. The land tax is eight-tenths of one per cent on the assessed value of land in the Concession and the tax on buildings is thirteen per cent of the assessed rental value. On the whole, taxes have been slightly higher in the Concession than in the Settlement.

Expenditures are apportioned on the basis of an annual budget submitted to the Provisional Commission for its advice and formal approval. Expenditures for police have averaged about thirty per cent of the total from 1928 to 1934, while expenditures for public works have averaged about twenty-four per cent of the total for the same period. Almost fifteen per cent of the budget has gone for interest and principal payments on indebtedness.<sup>18</sup> Although there is no popular approval of the budget, as in the Settlement, detailed figures are published in the annual reports and the budget and accounting systems are considered adequate for the needs of the government.

The employment of a technically trained staff on adequate pay and retirement allowances has resulted in the efficient administration of the various departments of the government. Security of tenure, however, is more uncertain than in the Settlement because of the control exercised by the Consul-General. The Chinese have not been ap-

<sup>18</sup> Reports of the Municipal Council of the French Concession, financial statements and budget estimates, 1933, 1934, 1935.

pointed to any of the higher posts and to date there seems to have been little demand for such appointments.

The government of the French Concession is highly centralized. Under the *Règlements* the Municipal Council is technically the representative governing body, but it has been superseded by the Provisional Commission under the control of the Consul-General. The residents of the Concession as such, therefore, have no legal means of obtaining any desired action. In practice the most influential residents and the most powerful business groups are consulted and their wishes heeded.

The relations of the French authorities with the Chinese have not presented many difficulties. The existence of only one national authority for the Concession has meant bilateral negotiation of problems as opposed to the multilateral negotiations necessitated by the rights of all the Treaty Powers in the International Settlement. The French have therefore been able to grant Chinese demands, when expedient, without the friction resulting from protracted negotiations. In general, the French have followed the lead of the Settlement authorities in dealing with such problems as Chinese representation and the rendition of the Mixed Court.

The French Concession, then, has significance for present Sino-foreign relations chiefly because it is a foreign-controlled area offering to foreigners and Chinese alike a place of refuge and security. Its future is closely bound up with that of the Settlement, and it is hardly conceivable that a change in its status could come without a change in the status of the other area.

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## CHAPTER V

### THE CHINESE MUNICIPALITY

**D**EVELOPMENT of the Chinese municipality is intimately linked with the growth of the foreign settlements. As the foreign trade of Shanghai has expanded, the increased business has drawn thousands of Chinese to the port. They came to work in shops, to unload the ships and haul the goods to warehouses, and to serve generally the thousands who settled there. These masses crowded into the foreign settlements, packed themselves into the native city, and in time overflowed these areas and gradually began to populate the territory surrounding the foreign settlements.

The Chinese walled town of Shanghai which the first foreign residents found on their arrival had an estimated population of one hundred thousand. The foreigners learned that it was located in one of the eight districts which formed the prefecture of Sunkiang in the province of Kiangsu. They also discovered that its system of local government was different from that of Western nations. This system, as it existed under the Manchus, is described by S. Wells Williams<sup>1</sup> as follows:

The native government of the city and district of Shanghai is in the hands of a district magistrate, assisted by a body of civil and military officers, who are all under the supervision of the Taotai or Intendant of Circuit. This officer has nominal control

<sup>1</sup> S. Wells Williams, *The Chinese Commercial Guide* (Hongkong, 1863), p. 191.

of the three departments of Suchau, Sunkiang and Taitang, but his chief duties are in connection with the foreigners and their trade.

There was also a superintendent of customs, who had his office in Shanghai, but until the revolution of 1911 the chief local official was the Taotai. This officer along with the District Magistrate was all-powerful in local government.

The Taotai's principal function locally was to deal with the foreigners and their trade and to superintend the collection of revenue. He looked after the occasional construction of such public works as stone jetties and the repair of the walls of the native city. He frequently called on the foreigners for assistance and just as frequently was adamant in the face of foreign requests for aid. This was particularly true when the foreigners requested the Taotai to provide better drainage, improve health conditions, or apprehend criminals living in the native city. The general services performed by Western municipal governments were unknown to the Chinese, and they seemed unwilling to learn or change their accustomed ways.

As the Chinese population of Shanghai increased and as these masses began to crowd around the foreign settlements, the foreigners became apprehensive for their health and safety. The Chinese districts south of the French Concession were said to be the headquarters for many criminals, and in the densely populated areas across Soochow Creek, north and east of the International Settlement, disease was rife and many epidemics were said to begin there. The foreigners, therefore, demanded that their control be extended so that they might eliminate

these sources of danger. The Chinese resisted these demands, with the result that dissension over such conditions continued. It was obvious that the Chinese were not going to adopt Western forms of local government wholesale, and that this development was to come slowly.

#### BEGINNINGS OF CHINESE MUNICIPAL ADMINISTRATION

In 1894 a fire destroyed many buildings along the waterfront outside the old walled city in the area called Nantao. The salutary clearance resulting from the fire made it possible to extend the paved Bund south some three miles beyond the boundary of the French Concession. This the Chinese decided to do, and to supervise the construction they appointed a committee, a council of sorts. Other municipal affairs were later assigned to this committee.<sup>2</sup> Sometime after 1906 a Works Bureau for Nantao and the native city was set up, although records of its municipal functions are fragmentary. In 1906 there was established a Chinese Works Bureau for North Sinza, later known as the Chapei Constabulary or Chapei Municipality. This agency was to operate in the northeast area across Soochow Creek. It was only a quasi-municipal organization and undertook to perform only certain police functions and to maintain roads in the district. Also in Chapei, at about the same time, a group of private individuals organized a waterworks company to provide the district with an adequate water supply. This company, however, soon got into difficulties over a loan from some Japa-

<sup>2</sup> *North China Herald*, December 20, 1894.

nese bankers and was forced to suspend operations before much had been accomplished.<sup>3</sup>

It is generally believed that the reason the Chinese attempted to establish some form of municipal government for the areas adjoining the settlements was to prevent the extension of the foreign areas. For, in the negotiations for extension in 1905 and 1906 and again in 1914, the Chinese maintained that since there was already a government functioning in the areas desired by the foreigners, there was no need for such extension.<sup>4</sup> The foreigners claimed that no government worthy of the name was functioning there and that health conditions and crime conditions had become so bad that something had to be done.

The first real attempt to form a Chinese municipality was undertaken in 1926 while Marshal Sun Chuan-fang was in control of the Shanghai area and Kiangsu Province. He appointed Dr. V. K. Ting as Director-General for the port of Shanghai and Woosung, with power to exercise general supervision over the existing municipalities of Chapei and Nantao. Elaborate plans were then made for Westernization of these areas. These plans were never put into execution, for in 1927 the armies of General Chiang Kai-shek drove Marshal Sun out of Kiangsu and captured the territory surrounding Shanghai.

#### THE MUNICIPALITY OF GREATER SHANGHAI

The inauguration of the Nationalist regime at Nanking was followed by the formation of a Western form

<sup>3</sup> Shanghai Municipal Council Archives, "Correspondence Respecting Settlement Extension" (unpublished).

<sup>4</sup> *Ibid*; see discussion below in chapter x, p. 208.

of municipal government for the Chinese areas surrounding the foreign settlements.<sup>5</sup> This new Chinese municipality was created by an act of the Nanking government on July 14, 1927. As revised on May 20, 1930, the act created the special district of Shanghai and placed it under the direct control of the Chinese national government.<sup>6</sup> The Municipality of Greater Shanghai, as the special district was called, has an area of 320 square miles. It includes all of the old Chinese districts, Nantao, Chapei, and the old walled city, and completely surrounds the two foreign areas.<sup>7</sup> In addition it includes the area directly across the Whangpoo from Shanghai known as Pootung. Much of this territory is rural in character, providing considerable space for urban development. At present it is said that the new government has attempted to operate within only about 190 square miles of its total jurisdiction.<sup>8</sup>

The Chinese city government is similar in form to that of the foreign settlements, particularly to that of the French Concession. The chief executive officer is the

<sup>5</sup> The fact that the Chinese Nationalist government after 1927 pledged itself to obtain rendition of the foreign settlements, and that one of the principal foreign arguments against rendition was the alleged inability of the Chinese to operate a modern municipal government, undoubtedly was an important factor in the creation of the Municipality of Greater Shanghai.

<sup>6</sup> Special municipal districts were also created for Canton, Nanking, Peiping, Tsingtao, and Tientsin.

<sup>7</sup> Estimated population, 1935: Foreigners, 11,585; Chinese, 2,015,206; Total, 2,026,791. See Shanghai Municipal Council, *Annual Report*, 1935, p. 129.

<sup>8</sup> Based on statements secured by interviews with Chinese officials.

mayor, appointed directly by the national government for an indefinite term. The chief administrative officer is the secretary-general, also appointed by the national government, and having powers and duties comparable to the secretary of the Shanghai Municipal Council. This latter office is intended to be less subject to political changes than that of the mayor. As in the International Settlement there is no close division of powers between the mayor and the secretary-general and both are often required to give attention to political problems affecting their relations with the foreign settlements.

A Greater Shanghai Provisional Municipal Council has been appointed by the mayor to advise the administration on matters of policy and to assist in preparing the way for a more democratic form of government.<sup>9</sup> The duties of this body are at present largely confined to holding meetings and passing resolutions.

The work of the government is carried on by bureaus, which under the revised law of 1931 are as follows: Social Affairs, Public Safety, Finance, Public Works, Education, Public Health, Land, and Public Utilities.<sup>10</sup> Each bureau is headed by a director and is administered through divisional units. Their titles indicate the nature of their work, which has been largely patterned after the corre-

<sup>9</sup> *North China Herald*, July 3, 1935.

<sup>10</sup> Special reports are published in English and Chinese by the Bureau of Social Affairs. The best sources for information in English are: Shanghai Civic Association, *Statistics of Shanghai* (much of the data in this publication was furnished officially by the bureaus of the municipality); H. G. W. Woodhead's *China Yearbook* (Shanghai, published annually), which contains condensed information on the Chinese city.

sponding departments in the governments of the foreign areas.

The Bureau of Social Affairs is essentially a public-welfare department concerned with the investigation of labor conditions, the settlement of labor disputes, charity, relief, and aiding the agricultural sections under the control of the municipality. Offices for the development of parks, industrial research, and the testing and control of weights and measures are included in this bureau.

The Bureau of Public Safety carries on the functions of police and fire protection. Its performance of these duties is hampered by lack of trained personnel and by too great political control of appointments and dismissals. Like the similar bureau in the two foreign areas, the Chinese municipality's is handicapped by conflicts of municipal jurisdiction, particularly in the outside roads areas. It has also been handicapped in the enforcement of municipal ordinances against foreigners possessing extraterritorial rights.

As an adjunct to the Bureau of Public Safety there exists the Peace Preservation Corps. This special force acts in the same capacity as the Shanghai Volunteer Corps and is usually composed of army units. It is nominally under control of the municipality, although national politics sometimes dictates its composition and its actions. From time to time additional army units have been stationed in the Shanghai area, which have usually been given the title of the Shanghai and Woosung Garrison. Its commander is responsible to the high command of the Nationalist army. It has varied in strength, and sometimes absorbs the Peace Preservation Corps. Because these forces

are not theoretically under a single direction, and because their composition and control have often been determined by politics, their actions frequently serve to promote conflict rather than to maintain order.<sup>11</sup>

The Finance Department is concerned with all questions of revenue and expenditure. From its beginning the Chinese municipality has had difficulty in raising funds to take care of normal operating expenses and expansion of municipal activities. The basis of this difficulty lies in the fact that the municipality controls only the fringe of an urban area, the greatest amount of taxable wealth being located in the foreign settlements. Although the population of the Chinese municipality is larger than that of the International Settlement, the average annual budget since 1927 has been about \$8,000,000 (Chinese) as compared with \$25,000,000 (Chinese) for the Settlement and about \$10,000,000 (Chinese) for the Concession.<sup>12</sup> This comparatively small revenue is derived chiefly from a general municipal tax on land and houses, similar to the rates of the Settlement, from permit and license fees, and from business taxes. Since 1929, the government has operated

<sup>11</sup> The famous Nineteenth Route Army acted as the Shanghai and Woosung Garrison in the spring of 1932.

<sup>12</sup> Revenues and expenditures (in Chinese dollars) for recent years were :

Year	Revenues	Expenditures
1929 .....	5,866,092	6,105,153
1930 .....	7,310,985	8,670,837
1931 .....	8,217,991	9,337,003
1932 .....	14,178,236*	11,841,539
1933 .....	5,915,639	7,489,594

\* Included a \$6,000,000 reconstruction loan.

The use of an ordinary and an extraordinary budget makes percentage estimates of revenue and expenditure mean little.

with a deficit and has had to borrow from time to time through the issuance of debentures. In addition to indebtedness for a reconstruction loan of 6,000,000 Chinese dollars, the municipality has a bonded debt of over three and one-half million dollars. Special loans have been floated for the construction of the new civic center.

The distribution of ordinary expenditures has been similar in proportion to that in the foreign areas, the largest amounts going for police protection, education, and public works, in the order named.<sup>13</sup> Municipal funds have been deposited in a special City Bank operated by the municipality.<sup>14</sup> Its capital of one million dollars was obtained from the reconstruction loan floated in 1930, and was recently increased to six million, one-half being provided by the city government and one-half by private subscription.

Although no large sums have been spent for education, this function has not been neglected and progress with it is being made. According to the most recent report, 1,879 children are in kindergartens, 114,602 attend primary schools, 25,541 are enrolled in middle schools, and 1,157 attend normal schools. Vocational schools are caring for 2,381, and universities under governmental auspices have an enrollment of 6,934.<sup>15</sup> Standards set for teachers and

<sup>13</sup> Average percentage expenditure for the period 1927-1932: Police, twenty-eight per cent; public works, sixteen per cent; education, twenty-two per cent.

<sup>14</sup> Five directors are appointed by the mayor for a term of three years and three supervisors for a term of one year. One of the directors is chosen chief manager of the bank.

<sup>15</sup> *Statistics of Shanghai* (cited in note 10), and Shanghai Municipal Council, *Annual Reports*, 1934-35.

students have been high and compare favorably with those of the foreign institutions.

The Public Health Bureau is well organized along modern lines and it is probably in this field that the Chinese can point to the greatest advance since 1927. In spite of lack of funds, a well-trained Chinese staff have made the most of their opportunities. It was reported that 1,300,000 Chinese dollars had been spent for public health in the last four years and that 1,400,000 had been spent in establishing health centers and opium clinics and in improving hospital equipment.<sup>16</sup> These sums are obviously inadequate for the two million Chinese under the municipality's jurisdiction. However, the money has been well spent and there are far fewer complaints from foreigners on bad health conditions in the Chinese areas than before 1927. The development of real co-operation between Chinese and foreign authorities in this field has already been pointed out.

The Land Bureau collects taxes on farm land within the city's limits and acts as a registration office for the whole municipality, preparing surveys and street plans in conjunction with the Bureau of Public Works. The Bureau of Public Utilities is charged with the maintenance of street lighting, the regulation of transportation services, and the inspection of electric and gas installations in private houses and factories. So far the municipal government has not attempted any stringent regulation of public utilities but has been content to develop an inspection serv-

<sup>16</sup> *North China Herald*, January 8, 1936, speech of Mayor Wu Te-chen.

ice and to formulate general rules and regulations for the installation of public services.

After the Chinese city government objected to the extension of franchise agreements with the gas, electricity, and telephone companies located in the International Settlement for services in Chinese territory, a *modus vivendi* was finally worked out permitting the organization of subsidiary companies for the Chinese area. This action would seem to make unnecessary the organization of Chinese public-service companies for the present.

In addition to the various bureaus, there is also a Secretariat, which is the official recording agency; a legal division; and a history compilation office. Advisory committees have been appointed by the mayor from time to time to assist in the development of the work of the bureaus and to advise on questions of policy.

#### PLANS FOR THE FUTURE

The fact that the foreigners have long alleged that the Chinese were incapable of developing a modern municipality which would compare favorably with their own has been an important factor in the projection of plans for the future city of Greater Shanghai. The Chinese definitely hope that if these plans are realized, the foreign areas will be absorbed into this larger municipality. As announced and later amplified by the mayor of the present Chinese city, General Wu Te-chen, these plans call for the zoning of the whole area north and east of the International Settlement as far as Woosung. A new industrial district with adjacent wharves for ocean-going ships is mapped out with adequate rail facilities. The civic center, already begun,

is to be surrounded by residential areas for city employees and workers. The plan seems to be well thought out, and a start has been made with the construction of civic-center buildings of an interesting type of modernized Chinese architecture. Its fulfillment, however, is principally dependent upon a large supply of capital and a general movement of foreign and Chinese business from the foreign settlements to this new area. It is unlikely that this will take place unless there is a phenomenal growth of Shanghai's population.

Progress is being made, however, and in his New Year's speech in 1936, Mayor Wu pointed out that since 1932 the Chinese city government has been concerned with rehabilitation of the devastated areas resulting from the Sino-Japanese hostilities, with improving conditions of industrial workers by the construction of workers' villages, and with general economic and social progress. He announced that the program for 1936 would include, among other things, an increase in the number of vocational schools, construction of a municipal library and museum, construction of a municipal hospital and laboratory with additional health centers, and construction of a bridge across the Whangpoo to Pootung.<sup>17</sup>

The government of the Municipality of Greater Shanghai is compactly organized along functional lines and the administration is highly centralized. The fact that the government derives its authority from the central Chinese government gives it a definite legal basis. On the other hand, the fact that all administrative officers are appointed

<sup>17</sup> *North China Herald*, January 8, 1936.

by and ultimately responsible to the national government is a considerable handicap. Since the work of many of its bureaus touches on political problems in the Shanghai area, political control has impaired efficiency and has prevented full development of the principle of service in the public interest. In spite of this political influence, however, the responsible officials of the Chinese city government are generally found to be competent and adequately trained; and if this type of official is retained and allowed to work with a minimum of political interference, the basis for a stable, efficient government will have been laid.

Perhaps the greatest criticism of the Chinese municipal government has been the bureaucratic enforcement of law in the Chinese area. Although a court system has been set up, similar in organization to the Chinese courts in the foreign areas, practically all municipal laws in respect to health, safety, and police are issued by the various ministries of the national government to be enforced by the proper bureau of the municipality.<sup>18</sup> Each bureau, therefore, in addition to its purely administrative functions, becomes an enforcing agency for these ordinances and a judicial agency in prescribing punishments and assessing fines. Appeal from the decision of administrative officers in charge can be taken only to the ministry of the national government which issued the ordinance, and its decision is final. This procedure makes for arbitrary legislation and arbitrary enforcement and certainly does not guarantee justice. It places the administration and the enforcement of a large body of law in the hands of politically

<sup>18</sup> See Shanghai Municipal Council, *Annual Report*, 1932-33, Municipal Advocate's Report, p. 130.

controlled officials; it permits the continuation of the "squeeze" system; and it allows disputes over enforcement of law to be settled on inequitable grounds, personal influence and family connections playing an important part. Such bureaucratic law enforcement should be eliminated by establishing a sound court system and providing for the enforcement of law by judicial process. As long as the Chinese national government maintains its control over the Chinese municipality, this change is unlikely. At present this condition is the strongest argument against rendition of the foreign areas to China.

In spite of all these handicaps, most observers in Shanghai are agreed that in the short space of about eight years the Chinese have made notable advances in the conduct of a modern municipal government. Residents of the Chinese municipal area have profited by better police protection, better health protection, and improved public services and transportation facilities. It has been demonstrated that properly trained Chinese officials, when free from political pressure, can do their work efficiently. There has been definite improvement in the relations between the Chinese city officials and the foreign authorities. The development of the Chinese Municipality of Greater Shanghai has progressed beyond what many foreigners believed possible.

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## CHAPTER VI

### ADMINISTRATION OF JUSTICE: THE MIXED COURTS

**A**DMINISTRATION of justice in Shanghai has proved to be one of the most complicated and controversial of the problems confronting the municipal and consular authorities. It is here treated in its historical setting, since the establishment of Chinese courts in the foreign areas has removed it from the category of Sino-foreign problems.

#### THE PROBLEM OF JURISDICTION

In China, as in Egypt, Turkey, and other Oriental countries, foreign merchants desired to place themselves neither under native laws regarded by them as inequitable nor under the jurisdiction of native governments which they regarded as backward and barbaric. The Chinese system of family responsibility was in direct contradiction to the principle of individual responsibility under Western law. Consequently, the treaties which were forced upon China in 1842-1844 provided for a system of extraterritoriality by which the nationals of the Treaty Powers would be subject only to their own laws and to the jurisdiction of their own national officials. This system, still in force, first found expression in the British Supplementary Treaty of the Bogue of 1843, the American Treaty of Wanghia, and the French Treaty of Whampoa signed in 1844. By the most-favored-nation clause or by specific

provision it was adopted by most nations having treaties with China.

This system saved the foreigners from the application of Chinese laws but raised a host of problems in Sino-foreign relations which have been irritants to this day. First, the only foreign authorities who could administer national law to their citizens were the consuls, who had in most cases received no legal training. This was particularly true in the earlier days when most of the consuls were also merchants. Although special courts were later established by the British and Americans, most of the Treaty Powers have continued to rely on the consul to administer justice as well as attend to his other duties. Second, there were always numerous nationals in the treaty ports without consular representation who nevertheless demanded the privileges of extraterritoriality, and various expedients had to be devised to deal with this group. Third, there was the question of the status of Chinese living in the foreign concessions and settlements. Were they still under the jurisdiction of their own local magistrate? Could foreign authorities force their own rules and regulations on them to the exclusion of the jurisdiction of Chinese authorities? Fourth, there was the vexatious question of mixed cases, between represented and unrepresented foreigners and between foreigners and Chinese. The attempts of foreigners and Chinese to deal with these problems gives considerable insight into Sino-foreign relationships and foreign and Chinese attitudes.

As has been indicated, the consular representatives in Shanghai in the twenty-five or thirty years which followed the opening of the port were mostly merchants, many of

whom acted as representatives of two or more nations and few of whom had any legal training. Therefore, justice was administered on the basis of expediency. Until the establishment of formal consular courts there was no appeal for the national from the decision of his consul. There were many complaints; these were voiced frequently in the newspapers and arose from situations like that depicted in the old phrase from the lips of a judge: "You are not guilty, prisoner, but don't do it again."<sup>1</sup> Unrepresented foreigners were usually sent to the magistrate in the native city to be dealt with according to Chinese law.

The greatest difficulty arose, however, with respect to mixed cases. The foreigners did not wish to allow complete jurisdiction to the Chinese authorities within the foreign settlements and very early adopted the practice of holding a hearing before turning the culprit over to the Chinese authorities of the native city. This practice was used in dealing with Chinese violators of the Land Regulations of 1845 and 1854, but it was admittedly unsatisfactory. In 1852 a Chinese was murdered by a foreign sailor from the crew of the "Emily Jones." While the crime had been committed at Paoshan, outside the Shanghai settlements, a joint inquiry was held by the British Consul, the District Magistrate, and the Taotai. The procedure was extremely unsatisfactory, as may be inferred from the newspaper report of it: "The indisposition of the Taotai in the present instance to enforce decorum in the language or even in the deportment of the Chinese witnesses was plain as it was significant, and the intimation

<sup>1</sup> *North China Herald*, July 10, 1858.

of the Consul that he would stay proceedings if the Taotai did not put an end to the insolence of the witnesses seemed absolutely necessary to move him."<sup>2</sup> Although unsatisfactory as a method of handling mixed cases, a precedent was created for some sort of joint hearing, which later was made the basis for a joint judgment.

Mixed cases presented two problems, that of jurisdiction and that of actual procedure respecting the trial and decision. The foreign settlements received a large Chinese population in the 'fifties, and this raised the question of the jurisdiction of the foreign municipal authorities in cases of violations of the Land Regulations. R. C. Murphy, United States Consul, declared in 1856:

The Municipal Authority of Shanghai is a special delegation of power from the Treaty Consuls for the convenience and interests of the residents in general. The Municipal Police is a branch of that body. Their authority for police purposes extends over every foreign resident as well as native within the limits of the foreign settlement.<sup>3</sup>

But this view was not wholly accepted by foreigners or by the Chinese.

In the decade following the adoption of the 1854 Land Regulations, the Municipal Council first tried sending Chinese offenders for punishment to the Chinese magistrate, who usually refused this responsibility or freed the offender. Next the Council, with the sanction of the British and American consuls, adopted the procedure of sending the most serious offenders to the native city and sentencing

<sup>2</sup> *Ibid.*, July 10, 1852.

<sup>3</sup> *Ibid.*, August 23, 1856.

the others to a term in prison in the Settlement or to work in the chain gang on the roads. This imposed considerable work on the consuls who heard the cases and was of doubtful legality, since Settlement authority over Chinese had not been fully accepted. Civil cases between foreigners and Chinese in the Settlement were heard by the Taotai on complaint of the consul concerned, "and were usually decided after an *ex parte* examination of the persons complained of."<sup>4</sup> Chinese civil cases were usually settled by arbitration by the Taotai or by the guilds in the city according to Chinese custom.

#### ESTABLISHMENT OF THE MIXED COURT IN THE INTERNATIONAL SETTLEMENT

So unsatisfactory were these makeshift procedures that the problem of mixed cases was one of continual discussion, and in the 'sixties several solutions for this and correlative problems were proposed. At a special meeting of land-renters on September 8, 1862, the Municipal Council of the Settlement proposed that the Ministers petition the Chinese government to delegate to the Council the authority to enable them to adjudicate within the limits of the Settlement on all Chinese and foreigners not represented by consuls. Such jurisdiction it was proposed should include only matters connected with the Land Regulations, municipal rules, and civil suits within 1,000 taels, and punishment should be limited to a fine of 500 taels or three months' imprisonment. The Council recom-

<sup>4</sup> G. W. Keeton, *The Development of Extraterritoriality in China* (New York, 1928), Vol. I, pp. 347-48.

mended that "offences of a more serious nature should be referred to the Chinese authorities or to a joint tribunal of treaty Consuls and Chinese officials, and civil causes should be subject to appeal to the same authority."<sup>5</sup> A similar suggestion for the handling of cases had been made two days previous to this meeting in an editorial in the *North China Herald*.<sup>6</sup>

These proposals, together with one for the creation of a municipal police court, were discussed by the consuls in the latter part of 1862 and during 1863. The principal objection to them was that such schemes were not in conformity with the treaties.<sup>7</sup> Early in 1864 the consuls agreed on a set of principles upon which some sort of a joint tribunal might be constructed, namely:

That it was desirable to secure, (1) the appointment of a native officer to act as magistrate of first instance in all minor cases, civil and criminal, brought forward against Chinese at the port including police cases reported by the foreign police. (2) Recognition of the right to delegate officers to sit with the native magistrate so appointed to watch proceedings and to assist complainants in the presentation of their matters. (3) An understanding with the Intendent of Circuit under which he would hear grave matters, assisted by the chief consular officer of the foreigner concerned and appeals from the magistrate above mentioned.<sup>8</sup>

<sup>5</sup> *North China Herald*, September 13, 1862.

<sup>6</sup> *Ibid.*, September 6, 1862.

<sup>7</sup> Great Britain, *Accounts and Papers*, 1864, Vol. LXIII, Minutes of a Meeting of Foreign Consuls, November 19, 1863. In No. 124, p. 180.

<sup>8</sup> G. F. Seward, "Memorandum on the Mixed Court at Shanghai," *United States House Executive Documents*, 46th Congress, 3d Session, Correspondence with China, No. 46, pp. 157-62.

The exact origin of the so-called "Mixed Court" is not altogether clear. Undoubtedly the consuls proceeded to discuss the problem with the Taotai along the lines mentioned by United States Consul George F. Seward. Sir Harry Parkes, generally given credit for the original rules, participated in these discussions, as did various members of the community. There was evidently some disagreement between the members of the Municipal Council and the consuls which continued for a few years after the court came into existence. Presumably this was the usual friction which always developed over any problem which concerned both these groups. It was stated in a land-renters' meeting in April 1865 that an original draft of rules for a Mixed Court had been prepared by the Council only to be discarded by the consuls for one of their own.<sup>9</sup> Be that as it may, it was announced to the land-renters at their annual meeting in April 1864 that a Chinese court for the Settlement had been proposed and approved by the Chinese authorities, to consist of a Chinese magistrate assisted by two foreign assessors. At a meeting in June of the same year the chairman of the Municipal Council announced that a first draft of regulations for this Chinese or Mixed Court had been prepared, giving it civil as well as criminal jurisdiction. The original draft has disappeared, but probably it followed very closely the outline published in the *North China Herald* in July 1866, which stated that the Court was to be:

(1) A police court presided over alone by a deputy of the District Magistrate to try purely native cases brought before him by the municipal police.

<sup>9</sup> *North China Herald*, April 25, 1865.

(2) A criminal court for the trial of Chinese charged by foreigners; and for foreigners having no consular representatives. In this court the Chinese Magistrate was alone authorized to deliver judgment, but a consular assessor was to be associated with him, having power of staying proceedings and with the right of appeal—and when a non-represented foreigner was on trial two assessors were required.

(3) A civil court constituted like the latter but as the cases usually brought before it were of great importance, the place of the deputy was to be taken by his principal, the District Magistrate.

(4) A court of appeal or reference presided over by the Tao-tai assisted by one or more Consuls according to what foreign interests were concerned.<sup>10</sup>

Thus there came into being the strange institution known as the Mixed Court of the International Settlement, which remained in existence from 1864 until 1927. The Court was set up in an outbuilding of the British Consulate, the British Vice-Consul, C. Alabaster, being appointed first assessor.<sup>11</sup>

#### ADMINISTRATIVE DIFFICULTIES

In order to conform to the treaties the court was established as a Chinese court, but the foreign assessors, who were to watch the case and give advice, yet were restrained from any part in the decision, soon came to have considerable influence. This was due mainly to two causes. First, the deputy of the Taotai, who was appointed as magistrate of the Court, was usually a minor official, lacking understanding of foreign ways and not always blessed with a great degree of intelligence; hence the assessors were

<sup>10</sup> *Ibid.*, July 7, 1866.

<sup>11</sup> G. W. Keeton, *op. cit.*, Vol. I, p. 348.

more than ready to advise in order to protect the interests of the foreigners. Second, the Court was really a court of equity where cases were arbitrated according to a peculiar mixture of foreign and Chinese ideas of justice. For punishments, the Court could inflict one hundred blows of the bamboo, the cangue for fourteen days, hard labor for fourteen days, imprisonment, or deportation. In criminal cases, Chinese law was administered, modified often by the assessor's ideas of humanity. In civil cases, Western law was administered as no civil law existed in China comparable to that of the Occident. It therefore developed that the assessor did most of the work and practically decided civil cases, as the magistrate was usually in total ignorance of any kind of foreign law.

The Chinese authorities, particularly the Taotai, objected to the growing influence of the assessors and took various steps to combat that influence. The Taotai regarded the magistrate as his officer, as indeed he was, and in spite of foreign protestations continually attempted to interfere with the work of the Court.<sup>12</sup> The Chinese magistrate was of low rank, and offenders were frequently brought before the Court who outranked him. The magistrate would either then dismiss the case or become so servile in his attitude as to make a farce of court procedure. As a result there was almost constant friction between the foreign assessors and the Chinese officials, and numerous attempts were made to place the Court on a more satisfactory basis.

Attempts were also made to gain the approval of the

<sup>12</sup> G. F. Seward, *op. cit.*

Chinese Imperial Government for the tribunal, which heretofore had been lacking. Negotiations were initiated which culminated in 1869 in the promulgation of ten provisional rules for the Court, sanctioned by the Foreign Ministers in Peking and by the Chinese Imperial Government. These rules, still far from satisfactory and intended only to be temporary, were amended in 1902 and remained the only constitution of the Court until 1927.<sup>13</sup>

These rules provided briefly that "An official with the rank of sub-prefect be deputed to reside in the Settlement." This official was to be the magistrate of the Court, which was to have jurisdiction over civil, criminal, or commercial cases in which Chinese or unrepresented foreigners were involved or in which Chinese or unrepresented foreigners were the defendants. The magistrate was to provide lodging for prisoners and was to be assisted by an assessor in all cases involving foreigners. The rules also provided that warrants for arrest in the Settlement must be countersigned by the Senior Consul and, where a foreigner was concerned, by his own consul. Appeals from the decision of the magistrate might be taken to the Taotai sitting with the consul involved in the case. Thus the Court was fully sanctioned but was far from being an adequate tribunal for the purposes for which it was intended.<sup>14</sup>

The inadequacy of the Court rules and the ineffectiveness of it as a judicial tribunal are amply shown in the reports submitted by the various assessors in the decade

<sup>13</sup> Text of 1869 rules in Hertslet, *China Treaties*, Vol. II, and in Keeton, *op. cit.*, Vol. II, p. 662.

<sup>14</sup> G. F. Seward, *op. cit.*

following the adoption of the rules of 1869. One year after the adoption of these rules, the British Assessor, R. J. Forrest, reported:

As an institution for the administration of law in grave cases, the Mixed Court is a failure. Cases sent by it to the higher authorities are always ignored. Beyond the infliction of one hundred blows of the bamboo, the magistrate cannot go, unless by the consent of his superior officer.<sup>15</sup>

Forrest also pointed out some of the difficulties in apprehending offenders. Native police at first had been allowed to arrest Chinese within the Settlement, but because of the use of fictitious warrants and corrupt practices the foreign authorities began to require that all warrants be countersigned by the Senior Consul. In respect to the Chinese police system, he says:

Only those who have been behind the scenes can form any idea of the utter confusion and corruption of the Chinese police system. Nothing but the complete separation of the native police administration in the foreign settlements from that of the City can put it on a satisfactory basis and until the Magistrate of the Mixed Court holds an independent office, this cannot be attained.

After stating that the Taotai had too much influence and placed obstacles in the way of justice and that the allowance of 500 taels for the upkeep of the Court was wholly inadequate, Mr. Forrest concluded:

At the present time there is not a trustworthy native on the premises. The foreign assessor alone takes notes, as the Chinese apparently see no reason for keeping records. In fact, I may

<sup>15</sup> R. J. Forrest, "Memorandum on the Mixed Court Jurisdiction at Shanghai," Great Britain, *Accounts and Papers*, Vol. LXVI, Commercial Reports (China No. 2), 1871, pp. 24 ff.

briefly record my opinion that the Chinese authorities here evince no desire whatever to do justice to foreigners in criminal or civil actions. I do not see any remedy for this deplorable state of things until the Central Government at Peking gives to the Mixed Court the same protection and prestige it accords to the foreign customs establishment.<sup>16</sup>

The merchants, who were vitally interested in the problem of judicial administration in the Settlement, voiced the same criticisms and also pointed out that because of the Court's faulty procedure Chinese frequently failed to obtain justice, although most decisions were favorable to the Chinese, whether plaintiff or defendant. It was also pointed out that the assessors were not always capable of acting in a judicial capacity, and this lack of legal experience and knowledge further contributed to the Court's deficiencies.<sup>17</sup>

A still more comprehensive report on Mixed Court procedure and practice was prepared in 1872 by Arthur Davenport, British Assessor, who gave five causes for the unsatisfactory working of the Court:

(1) The jurisdiction of the Court is too circumscribed, limited to the British and American Settlements and can exact no jurisdiction in the Chinese City.

(2) The rank and pay of the sub-prefect are too low—the real official behind the Court is the Chinese District Magistrate.

<sup>16</sup> In 1854, when the Manchu customs officials at Shanghai fled from the city because of the Taiping rebellion, the foreigners took over the collection of the customs and set up the Chinese Imperial Maritime Customs Service, nominally under Chinese control but with a foreign staff and foreign-administered.

<sup>17</sup> Memorials Addressed by the Chambers of Commerce of China on the Subject of the Revision of the Treaty of Tientsin, Great Britain, *Accounts and Papers*, Vol. LXXIII, 1868, China, p. 2.

(3) The inability of the British Consul or assessor to reciprocate in civil or criminal cases is the cause of much animadversion and a great obstacle in the way of obtaining favorable decisions from the Court.

(4) The inadequacy of the punishments inflicted serves as a direct encouragement to crime.

(5) One of the principal causes of the alleged failure of the Court is the extremely reckless manner in which British subjects carry on dealings with the natives.<sup>18</sup>

These criticisms are supported by other reports and by the memorials from the British Chambers of Commerce previously referred to. Davenport then proceeds to suggest certain changes designed to cure the most glaring defects. "The Court should be under the direct authority of the Intendant of Circuit," he says, "who should issue writs in his name and such writs should have effect in the native city as well as in the Settlement. Cases between Chinese and British subjects should be tried by the Consul and the Intendant of Circuit without assessors. Hard labor should be definitely introduced as a mode of punishment."

During the next year Great Britain negotiated the so-called "Chefoo Agreement" with China, which, although not ratified until much later, contained clauses relative to the Mixed Court which indicate the importance of the problem and the attempts made to settle it. The agreement stated, in part:

The Chinese government has established at Shanghai a Mixed Court but the officer presiding over it, whether from lack of power or dread of unpopularity, constantly fails to enforce his judge-

<sup>18</sup> Arthur Davenport, "Memorandum on the Mixed Court at Shanghai," Great Britain, *Accounts and Papers, Commercial Reports* (China No. 2), 1872, pp. 57 ff.

ments. It is now understood that the Tsung-li Yamen will write a Circular to the Legations, inviting the foreign representatives at once to consider with the Tsung-li Yamen the measures needed for the more effective administration of justice in the ports open to trade.<sup>19</sup>

In July 1879 the initiative in the matter was taken by the foreign ministers in Peking, and it was decided to hold a conference for the consideration of various important questions, including that of judicial administration in the Treaty Ports.<sup>20</sup> The conference consisted of the Ministers of Great Britain, the United States, the Netherlands, Peru, Italy, and Japan, and the Chargés d'Affaires of Russia, Belgium, France, and Spain. Committees were formed to study and report on the various matters to be discussed. The Committee on Judicial Problems had before it the reports on the Mixed Court already mentioned. In addition there was presented a comprehensive report by the British Assessor Gardiner in which the work of the Court was thoroughly reviewed and which called attention to the inadequate jail facilities, the Chinese practice of "dumping" criminals into the Settlement, the dissatisfaction with the Court's administration of civil cases, the widespread system of corruption or "squeeze," and the fact that the magistrate was practically the servant of the Taotai.<sup>21</sup>

<sup>19</sup> Text of agreement in Hertslet, *China Treaties*, Vol. I, p. 76.

<sup>20</sup> *United States House Executive Documents*, 1880-81, 46th Congress, 3d Session, Correspondence with China, Mr. Seward to Secretary of State Evarts, July 12, 1879, pp. 140 ff.

<sup>21</sup> Great Britain, *Accounts and Papers*, Vol. LXXII, *Commercial Reports* (China No. 1), 1879, pp. 63 ff.

The American Minister, George F. Seward, formerly Consul-General at Shanghai, also presented a memorandum on the Mixed Court, in which he reviewed the history of the Court and the points already referred to in other memoranda presented, and concluded with the following recommendations:

It appears desirable: (1) To secure for the Magistrate an Imperial commission as *Tang Chih* (sub-prefect).

(2) To secure the amendment of the Mixed Court Rules so as to avoid the reference of any matters to the District Magistrate, or, failing this, to provide for the joint action of the Mixed Court and District Magistrates in grave criminal matters, the latter sitting in the Mixed Court in some cases.

(3) To urge the government to make suitable provision for the Court, the various native members of it to be paid suitable stipends, and an allowance made sufficient to cover their actual expenses.

(4) To advise our officers to use their best endeavors to secure the most careful procedure possible and to this end to urge the adoption of rules of procedure.

(5) To encourage the effort of assessors in the Court and in the Community of Shanghai to provide for the more satisfactory penal discipline of offenders.

(6) To bear in mind the occasion which exists to frame a code for commercial issues and to direct our respective officers as a preliminary step, to report the precedents already established by the Court.<sup>22</sup>

The Judicial Committee then reported to the Diplomatic Corps a series of six recommendations respecting the Mixed Court which follow almost exactly the recommendations of Mr. Seward given above. Following a con-

<sup>22</sup> *United States House Executive Documents*, 46th Congress, 3d Session, Correspondence with China, p. 164.

ference of the various representatives, a joint note was dispatched to the Tsung-li Yamen (the Chinese foreign office), embodying these recommendations, with the request that they be given effect. The response of the Tsung-li Yamen was evasive and requested time to gain the views of the southern officials regarding the problem. In April 1880 Prince Kung, representing the Tsung-li Yamen, replied at length to the request of the Diplomatic Body. Seward comments on the very general character of the reply and reports, "Altogether I do not consider the response of the foreign office to our representation very satisfactory . . . . I do not despair at all of our being able to work out the main purpose which we set before us last fall. . . ."<sup>23</sup> Later in the month Seward had a personal interview with the Yamen Ministers and obtained their promise to consider the requests of the Diplomatic Body and to write again to the provincial authorities, who were opposed to any changes. Seward was still hopeful of success; but the matter dragged on, other and more important questions obtruded themselves, and the Court question was at length practically forgotten.

The reports and proposals here quoted give some indication of the attempts of the foreigners to establish a Court on a Western model and present a good example of the difficulties of getting any action as far as the Chinese government was concerned. The residents of Shanghai found out through this and other experiences that they could expect little help from the Ministers at Peking or from the Chinese Imperial Government. Whatever was

<sup>23</sup> *Ibid.*

done must be done by themselves, in some way getting around the provisions of the treaties and acting much as an independent community performing those functions necessary to protect and preserve the life and property of the inhabitants.

From this time until 1911 the Mixed Court continued to grind out mixed justice, tempered by the humanity of the foreign assessors, and conditioned by the intricacies of local Chinese politics. The work of the Court, as shown by the reports of the assessors, and other comments, reflected in general the tenor of Sino-foreign relationships. In times of friction in Shanghai or elsewhere, the deficiencies of the Court were glaringly apparent. In the troublesome periods of 1885, 1897-98, 1900-1902, 1905, and 1910-11, general unrest found reflection in the work of the Court, manifested by disputes between the assessors and the Chinese magistrate. In times of comparative quiet, the Court worked fairly well and co-operation between authorities was easily maintained. Naturally, a great deal depended upon the character of the foreign assessors and the Chinese magistrate. With conscientious assessors and Chinese magistrates willing to co-operate, much could have been accomplished. Unfortunately, however, the political ambitions of the Magistrate and his subservience to the Taotai or the District Magistrate only increased the desire of the assessors to use their influence in maintaining foreign standards in order to counteract the corruption and maladministration which was always before them.

Three general tendencies may be observed in the work of the Court during this period. First, the more or less

constant attempt on the part of the assessors to "Westernize" the Court, that is, to bridge the gap between Chinese and European concepts and practices. Second, a combative tendency on the part of the Taotai and other superiors of the Chinese magistrate to use him to eliminate foreign influence and to further their own political ends. Third, a tendency on behalf of the Municipal authorities of the Settlement to resent Chinese interference or attempts at domination, particularly in criminal matters.<sup>24</sup>

The magistrates continually attempted to exercise administrative powers and insisted on arresting offenders inside the Settlement on warrants issued by the native authorities without notification to the Settlement officials. To combat this practice, the Municipal Council after a long struggle succeeded in enforcing the procedure of arrest in the Settlement only on warrants countersigned both by the magistrate and the Senior Consul.

A further development in the jurisdiction of the Court took place in this period which involved the Municipal Council in a serious dispute with Chinese officials of the native city and also the authorities of the French Concession. Prior to 1902 the Settlement authorities had had frequent conflicts with the Mixed Court of the French Concession (described below) over the question of jurisdiction. This brought about a serious dispute in 1902 when the French authorities sought to execute a warrant against a Chinese coolie employed by a French firm but domiciled in the International Settlement.<sup>25</sup> The Municipal Council

<sup>24</sup> Noted in practically every report of the Shanghai Municipal Council from 1880 to 1911.

<sup>25</sup> *North China Herald*, May 7, 16, and July 2, 1902.

refused to let the defendant be tried by the French Mixed Court, claiming exclusive jurisdiction for the Mixed Court of the Settlement. The Council's action precipitated a sharp controversy with the Consular Body. The consuls upheld the French, while the Municipal Council maintained that no native could be removed from the Settlement on a legal charge without a hearing before the Mixed Court of the Settlement and that the actions of the officials of the French Mixed Court were no exception to this rule. The consuls demurred, and the Municipal Council then refused to execute warrants stamped by the Senior Consul. The Council referred its action to a special meeting of the ratepayers and was unanimously upheld. The Consular Body referred the dispute to the Ministers in Peking, but to the chagrin of the consuls the diplomats also upheld the Council. The matter was then settled by the promulgation of additional provisional rules designed to prevent jurisdictional difficulties between the two mixed courts in the future.

These rules were approved by the Taotai on June 10, 1902, and were promulgated on June 28 on the sanction of the Diplomatic Body.<sup>26</sup> They related to both civil and criminal cases. Civil cases between Chinese were to be heard in the court of the defendant, domicile determining the jurisdiction. In criminal cases in which foreigners were not interested, the Mixed Court of the area where the crime was committed would alone be competent to hear the case. In mixed cases, both civil and criminal, the

<sup>26</sup> Text of the 1902 rules in J. V. A. MacMurray, *Treaties and Agreements with and Concerning China, 1894-1919* (New York, 1921), Vol. I (1902/5), p. 338.

Mixed Court of the International Settlement was to take jurisdiction over cases in which the plaintiff was other than French and in which the Chinese was a resident of the Settlement. If the plaintiff was French or the Chinese was a resident of the French Concession, jurisdiction passed to the French Mixed Court.

Most of these arrangements and negotiations were carried on without much reference to the Chinese authorities except to request their approval for any changes in the rules. When consuls and Council disputed jurisdiction, the Chinese seemed to be without rights in the matter, although the Court about which they argued was supposed to be Chinese. When the Chinese authorities disputed with the Settlement officials the question of jurisdiction, they found the Council and the consuls one in opposing them. A particularly serious case arose in 1905, when relations between Chinese and foreign officials attached to the Court were badly strained.<sup>27</sup> Charges flew back and forth. The foreigners contended that the magistrate countenanced corrupt practices and was using his position to intrench himself politically. They also charged the Chinese police with being notoriously dishonest. The Chinese magistrate accused the foreign police, who executed his warrants and attended sittings of the Court, of attempting to usurp his powers. Magistrates and assessors argued the matter openly during the trial of cases. The dispute reached a crisis in December 1905 over the authority of the magistrate and assessor in remanding prisoners to trial. A Chinese widow, Li Wang-shi, had been arrested

<sup>27</sup> Shanghai Municipal Council, *Annual Reports*, 1905-1906, and *North China Herald*, December 8, 15, 22, 29, 1905, January 12, 1906.

by municipal police together with fifteen girls whom she was accused of transporting for immoral purposes. The British assessor ordered the girls detained at the Door of Hope Refuge, while the Chinese magistrate ordered them placed in cells of the Mixed Court jail, which were in extremely filthy condition. An open fight occurred between the magistrate's runners and the municipal police in the yard of the Court and the police won out. The same question then arose over the detention of the widow, the magistrate alleging that the police had no case, as she was the widow of a provincial official returning to her home with her slave girls. The magistrate closed the Court and the Taotai appealed to the Diplomatic Body, which ordered the release of the widow and the girls over vigorous protests of the Council and the Consular Body. Feeling ran high in the Settlement, strikes were called, the Louza Police station was attacked by a mob, and the situation became serious. Although the Council and the consuls could not overrule the diplomats, they refused a demand of the Taotai that the British Assessor in the case be dismissed, and forced the re-opening of the Court with the same assessor on the bench. The rioters were now sentenced, but the widow and her girls were freed. Later, it was alleged by competent authorities that the charges against the widow were valid and that the Chinese contentions were an outburst of anti-foreign feeling rather than an expression of a sense of justice.<sup>28</sup>

The controversy between magistrates and assessors as to their powers and duties continued. Several attempts on

<sup>28</sup> *North China Herald*, February 16, 1906.

the part of the Consular Body and the Municipal Council to revise the rules were coldly received at Peking and came to naught. The business of the Court expanded rapidly, necessitating the appointment of three additional Chinese magistrates and two British, two German, and two American assessors to hear police cases.<sup>29</sup>

In 1911, on the eve of the revolution which drove the Manchus from power, the Mixed Court, though established originally as a Chinese Court in the Settlement, was practically dominated by the foreigners. No decision was given by the Chinese magistrate in criminal or civil cases where a foreigner was concerned without the concurrence of the foreign assessor in the case. All warrants, summonses, and court orders were issued by the magistrate and countersigned by the Senior Consul or an assessor acting as his deputy and then could only be executed by the Court's runners when accompanied by municipal police. Well might the Chinese say that the foreigners had taken the Court away from them. The foreigners, however, justified their action on grounds of necessity. Indeed, there seems ample evidence that the Chinese officials were often corrupt and inefficient and were prone to use their position or be used by their superiors for purely political ends. The crux of the difficulties seems to have been in the attempt of the foreigners to impose an entirely alien judicial system on a people who did not wish to accept it and who were so steeped in centuries of their own customs that they could have scarcely made it work had they been willing.

<sup>29</sup> Shanghai Municipal Council, *Annual Report*, 1909, p. 48.

## THE EFFECT OF THE 1911 REVOLUTION

The year 1911 marks the most important turning point in the history of the Court until its complete abolition. The first ten months of the year went by without incident. From January to November the Court heard 15,513 cases concerning ordinary civil and criminal matters. Outside of Shanghai, however, revolt was brewing, and by November the insurgents had gained control of the native city. The Manchu Dynasty soon collapsed and the Chinese magistrates, officials of the old regime, left the Court high and dry, taking all of the Court's funds they could lay their hands on.<sup>80</sup> To the foreigners, this presented a long-awaited opportunity for complete reorganization of the Court, since its continuance seemed to rest on foreign action. Therefore, just as they had assumed charge of the collection of the customs in 1854 during the Taiping rebellion, so now they assumed charge of the Mixed Court. The Municipal Council was anxious to take complete control of the Court and turn it into a proper municipal tribunal. The Consular Body, however, was more cautious, as evidenced by their proclamation of November 10, 1911, which states:

Whereas a vast number of Chinese reside and carry on business in the Settlement, and for cases, criminal and civil, a special Mixed Court exists, and whereas it is essential for the peace and good order of the said Settlement that the said Mixed Court with the prisons thereto attached should continue to carry on their functions, the Consuls of the Treaty Powers hereby notify all

<sup>80</sup> When the Court was taken over, toward the end of 1911, a shortage of 60,000 taels was found in the magistrate's accounts. Shanghai Municipal Council, *Annual Report*, 1912, p. 38a.

residents of the said Settlement, Foreign and Native alike, that by virtue of their position and authority they have as a temporary measure of expediency confirmed Messrs. Kuan Chun, Wong Chia-hsi, and Nieh Tsung-yi in the offices they already hold as the Chinese Magistrates of the said Court to act under the guidance and in concert with the Assessors of the said Consuls as heretofore, and have authorized the Council for the Foreign Community of Shanghai to direct the Municipal Police to take charge of the prisons of the said Court and to execute its summonses and warrants when bearing the seals of the proper Consular Authority and its decrees and orders when countersigned by the proper assessor, and to assist the said Court to maintain and uphold the lawful authority of the said Court in every way. Wherefore know ye, all classes and conditions, that the present uncertain state of affairs in the Shanghai district does in no way affect the enjoyment of all law-abiding Chinese residents in the said Settlement of their former rights, privileges and immunities and that anyone attempting to force, or threat, or by other forms of compulsion to interfere with such resident in the pursuit of his lawful business, or by force, or threat, or other forms of compulsion to induce any such resident to subscribe to the funds of any political party or society, will on detection be arrested and punished as a lawbreaker without any leniency.<sup>81</sup>

It will be noted that this carefully worded document does not entirely conform to the rules of 1869 nor would the Chinese be likely to approve the statement that the magistrate was to act "under the guidance of and in concert with the assessors." One month after the foregoing proclamation the Municipal Council took over payment of all salaries and expenses of the Court except those of the magistrate and assistant magistrates. The municipal police assumed full control of the police work of the Court

<sup>81</sup> Shanghai Municipal Council, *Annual Report*, 1912, pp. 52-53.

and a municipal officer was appointed to supervise its finances. This officer was later made Registrar in complete charge of all financial and clerical business of the Court. In a short time, also, the salaries of the magistrates were assumed by the Council. Thus the circumstances of the revolution completed the evolution of the Court from a Chinese institution to a foreign institution with a Chinese façade. From this date until rendition of the Court in 1927, it remained completely under foreign control and constituted a continual source of dispute between foreigners and Chinese. Undoubtedly circumstances hastened what would have taken place eventually, but the fact that the Chinese were powerless to prevent what they regarded properly as an encroachment on their rights only served to increase their ill feeling toward the foreigners.

Under foreign control the Court functioned more efficiently and was brought closer to foreign standards. The administrative work was undoubtedly carried on better under municipal auspices. Its criminal jurisdiction was extended by precedent to allow imposition of longer sentences, capital punishment, hard labor, and deportation from the Settlement. Nevertheless, many defects remained uncorrected until the end. The Court's decisions were more than ever dominated by the assessor, even in Chinese civil cases where the assessor was supposed to take no part at all. Defects arose from the lack of a proper constitutional basis for the Court and from indefinite demarcation of Chinese and foreign rights. Difficulty was encountered by the authorities over the question of rendition of Chinese fugitives from justice found in the Settlement, and this problem was never satisfactorily settled. The Court

fell behind in its docket and its records were not kept up to date, but this was gradually remedied by the appointment of additional magistrates and assessors and by the introduction of more effective procedure. Perhaps the gravest defect was the total absence of a court of appeals. The original rules had provided for an appellate tribunal of sorts consisting of the Senior Consul and the Taotai. This system had been in use but was of necessity abandoned after the revolution because under the Republican government the Taotai was no longer a competent judicial officer and the Chinese magistrates were no longer under his control. Hardly a year passed without some attempt on the part of the Consular Body or the Municipal Council to provide such a Court, but all were uniformly unsuccessful.

In 1926, the last year of its existence under foreign control, the Mixed Court consisted of seven Chinese magistrates and seven foreign assessors—two British, two American, two Japanese, and one Italian. In that year it held 2,186 sessions, heard 103,932 criminal cases, 2,848 Chinese civil cases, 606 mixed civil cases, and 1,209 rent cases, and held 206 inquests.<sup>32</sup> The last few years of the Court's existence were marked by a better spirit of co-operation between Chinese and foreign officials, owing, partially, to confidence on the part of the Chinese that their insistent demands for rendition would soon be satisfied.

The Mixed Court of the International Settlement had a long and unique history. It presented throughout its existence a queer combination of Oriental and Occidental

<sup>32</sup> Shanghai Municipal Council, *Annual Report*, 1926, p. 37. It has been stated that in the last few years of its existence the Mixed Court heard more criminal cases than any tribunal in the world.

ideas and practices. It has rightly been said that it "dealt in mixed cases and dispensed mixed justice." Magistrates questioned witnesses, and discussed the cases with opposing counsel. The evidence of the accused was held more valuable than that of an eyewitness. Sessions were marked by frequent altercations in which magistrates, assessors, witnesses, and counsel took an active part. Testimony was frequently interrupted by whispered consultation between the magistrate and the assessor over some dubious point of law or evidence. The tall, bearded Sikh police officers of the Council, the varied nationalities of plaintiffs and defendants, the use of a half a dozen languages in a single case, all lent a bizarre touch to the slowly grinding wheels of justice. At best, the Court was a makeshift. Nevertheless it served its purpose and was characteristic of so many of Shanghai's institutions, set up to serve an immediate need and carried on from year to year on the basis of expediency, without many changes, more or less automatically adapting itself to changing conditions, and finally falling of its own weight and before the onset of Chinese nationalism.

#### THE FRENCH CONCESSION MIXED COURT

While the Mixed Court was dispensing indifferent justice in the International Settlement, a sister institution had grown up south of the Yang-king-pang in the French Concession, where the same problems of maintaining jurisdiction over the natives and of dealing with mixed cases were to be found. In 1862, prior to the formal establishment of the Concession as an area completely separate from the International Settlement, most cases between

Chinese in the Concession were turned over to the Chinese authorities and mixed cases were handled in the French Consular Court. After 1858 these two types of cases were heard by the Taotai and the French Consul acting together, and more serious cases were sent to the Chinese officials in the native city. The French Consul adopted the practice of his colleagues in requiring that no warrants for arrest could be executed by the Chinese authorities within the limits of the Concession without his approval. This joint action of the Taotai and the French Consul was taken in accordance with Article 35 of the Treaty of Tientsin in 1858 which provided for mixed cases.<sup>83</sup>

After 1865, the French Consul alone judged cases in which Chinese were charged with violations of the ordinances of the Concession and also judged rent- and tax-appeal cases. In civil cases between Chinese or in mixed civil cases, the Consul exercised an arbitral role, sometimes assisted by the Taotai. The French officials objected to the rules for the Mixed Court of the International Settlement promulgated in 1869 on the ground that they gave the Chinese magistrate the sole power to adjudicate civil cases between Chinese in the foreign settlement. The French had not followed this practice, and the French Consul gradually assumed the right to deal with such cases himself.<sup>84</sup>

The French authorities, therefore, signed an accord with the Taotai in April 1869, which provided that the Taotai was to come to the Consulate three times a week

<sup>83</sup> Maybon and Fredet, *op. cit.*, pp. 347-48; also Louis des Courtils, *La Concession française de Changhai* (Paris, 1934), pp. 86 ff.

<sup>84</sup> Des Courtils, *loc. cit.*; see also *North China Herald*, August 11, 1931.

to hear cases with the Consul. No specific rules were promulgated, and the hearing of cases was guided by previous practice and common agreement between the Consul and the Taotai in each case. The practice in vogue was for the Consul and the Taotai to give a joint judgment in cases of Chinese violation of the Concession regulations or ordinances. Mixed civil cases and Chinese civil cases were usually judged in equity according to the nationality of the litigants. At first the Court, or more truly the hearing, was held when necessary; but, as business grew and the population of the Concession expanded, regular sessions were held and a more permanent organization was effected by agreements with the Taotai.<sup>85</sup>

The changes involved the appointment of a French "interpreter" or assessor to sit with a Chinese magistrate appointed by the Taotai, and the Court soon took on the same form and organization as the Court in the International Settlement. Until 1911, the French Mixed Court functioned at times satisfactorily and again with considerable friction. In general, the situation was simplified by the fact that only one foreign authority, the French Consul or his deputed assessor, had to be dealt with, in contrast to the many consuls in the Settlement. Consequently there was less friction between the Chinese and the French. Nevertheless the French Mixed Court reflected generally the tenor of Sino-foreign feeling and the local political situation in Shanghai. And although the French seemed to have somewhat less trouble with the Chinese authorities than other foreigners, when disputes did occur, the effects

<sup>85</sup> Des Courtils, *op. cit.*

were just as serious and disrupted the smooth working of the Court.

The revolution of 1911 deprived the Court of Chinese officials of the old regime, but the French Consul issued a proclamation that the Mixed Court of the Concession would continue to function. Very soon after the establishment of the Republic, the local Chinese Foreign Affairs Commission confirmed the appointment of a new Chinese magistrate for the Court, and this action was taken by the French authorities to mean that the tribunal had received the approval of the Republican government. After this change the French assessor sat with the magistrate on all cases and took part in the rendering of all decisions. Difficulties continued, as the Chinese objections to French influence in the Court's proceedings grew more voluble. There were many specific disputes relating to the extent of the Court's jurisdiction and to methods of dealing with criminal and civil cases.<sup>36</sup>

In general, the French followed the lead of the consuls north of the Yang-king-pang and were able to adopt changes made there in their own system by informal agreements with the Chinese officials. The authorities of the two foreign areas mutually supported each other after 1911 to a greater degree than before and this co-operation served to produce a more or less united front against Chinese demands for rendition of the Mixed Courts of both areas. After the rendition of the International Settlement Mixed Court in 1927, the French were able to resist Chinese demands on the grounds that they must wait and see

<sup>36</sup> *Ibid.*

how the new Provisional Court of the Settlement was going to function. With the establishment of Chinese Courts within the Settlement in 1930, the French were forced to follow suit and there was made public on July 29, 1931, an agreement for the rendition of the Mixed Court of the French Concession.<sup>87</sup>

The rise of the Chinese Nationalist government, with its program of the abolition of the "unequal" treaties and the rendition of all foreign concessions and settlements, forced the foreigners to make some concessions; and the easiest thing to give up was the old regime of the Mixed courts. These courts had been built on shaky legal foundation, and with the promulgation of a Chinese civil and criminal code few arguments were left in support of their maintenance. Their final rendition was a matter for political negotiation and had little connection with such abstract things as law and justice, yet the settlement itself was rational and logical.

<sup>87</sup> Text in *North China Herald*, August 4, 1931.

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## CHAPTER VII

### ADMINISTRATION OF JUSTICE: THE CHINESE COURTS

THE circumstances which brought about the rendition of the Mixed Courts in the foreign areas are numerous, but the principal cause lay in the development of a Chinese nationalism and the establishment of the Kuomintang government at Nanking in the latter part of 1927. These events, coupled with changing conditions in the International Settlement, had served to reinforce Chinese demands to the point where the foreigners felt it was expedient to give in. The affair of May 30, 1925, in the International Settlement and a similar affray at Canton had crystallized Chinese demands for rendition of the Mixed Courts.

#### THE PROVISIONAL COURT

As a result of continued agitation, an agreement was reached on August 31, 1926, for rendition of the Mixed Court of the International Settlement to take effect January 1, 1927.<sup>1</sup> This agreement was provisional in its nature and contingent on the negotiation of a further agreement for the establishment of Chinese courts in the Settlement.

<sup>1</sup> Text of agreement and exchanges of notes in Shanghai Municipal Council, *Annual Report*, 1927, p. 63; and A. J. Toynbee, ed., *Survey of International Affairs*, 1926 (London, 1928), p. 495.

A Mixed Commission was formed to prepare the way for rendition and an exchange of notes between the Chinese and foreign authorities clarified certain points respecting classification of offenses and criminal and civil procedure. The agreement received the approval of the local officials, of the Diplomatic Body, and the Chinese government.

The court set up by this agreement was known as the Shanghai Provisional Court. The Kiangsu Provincial government appointed the judges and essentially controlled it. In its structure it was somewhat similar to the Mixed Court before 1911. In place of the consular assessors, foreign deputies were appointed as representatives of the Treaty Consuls. The participation of the deputy in decisions of the court was limited to criminal cases involving foreigners or to cases involving the Land Regulations and By-laws. A joint judgment was given in cases where the plaintiff was a foreigner. An appeal procedure similar to that under the old Mixed Court rules was established; appeals in mixed cases were to be taken before the local Chinese Commissioner for Foreign Affairs appointed by the Nationalist government and the consul concerned. Jurisdiction over criminal cases was practically the same as under the Mixed Court, but was stated more clearly in the rendition agreement. The court was to apply both Chinese and foreign law, and precedents and decisions of the Mixed Court were to be considered in rendering decisions.

The three-year life of the Provisional Court was marked by a good deal of friction and criticism. This was primarily due to divergent Chinese and foreign views as to the proper sphere of the court and the scope of its func-

tions. The foreigners attempted to apply stringent judicial standards to the work of the court and criticized its lapses freely. The Chinese felt the court was transitory and resented any attempt at foreign interference. The chief criticisms of the work of the Provisional Court pertained to the political interference of higher Chinese authorities. It was stated that the Kiangsu Provincial government refused to confirm the sentences of the court in serious criminal cases. The efforts of the Chinese judges to keep the court free from such political influences were not successful. In addition there were the usual delays incident to the operation of any new judicial tribunal.<sup>2</sup>

Considering the fact that the Provisional Court was intended to be just what its name implies and that it was continually subjected to pressure from both Chinese and foreigners, it is a wonder that it functioned at all. Much credit is due to the conscientious Chinese and foreign officials and attorneys who were interested in the proper administration of justice and in bridging the gap between Chinese and Western law. They did much to overcome the difficulties encountered and to demonstrate that co-operation is possible.

In 1929, the last year of the Provisional Court, it was reported that there had been a marked improvement in its work, especially in the handling of criminal cases.<sup>3</sup> In that year it heard 116,643 criminal and civil cases. Of the criminal cases heard there was a record of about ninety per cent convictions.

<sup>2</sup> See statements in Shanghai Municipal Council, *Annual Reports*, 1927, p. 43; *ibid.*, 1928, p. 48; *ibid.*, 1929, p. 70.

<sup>3</sup> *Ibid.*, 1930, pp. 70 ff.

## THE NEW CHINESE COURTS

An exchange of notes and conversations in the autumn of 1929 was followed by the announcement of a conference between representatives of the interested powers with treaty privileges and the Chinese government, to be held in Nanking in November of that year. Because of various delays the conference was postponed until the following February. In that month an agreement was signed between the Chinese government and representatives of the United States, Great Britain, Brazil, Norway, and the Netherlands.<sup>4</sup> This agreement went into effect on April 1, 1930, and established in the International Settlement Chinese courts which, for the first time, are an integral part of the Chinese judicial system.<sup>5</sup> The agreement represents the ultimate of Chinese judicial demands short of complete rendition of the foreign settlements and the abolition of extraterritoriality. It terminated all previous agreements concerning Chinese courts in the Settlement and abolished the Provisional Court. It was to run for three years and to be continued for additional three-year periods by mu-

<sup>4</sup> The Chinese government invited only those Powers whose extraterritorial rights were assured by treaty. Other powers had agreed in the Tariff Autonomy treaties to give up these rights conditionally. It was stated that the Chinese contended that the Japanese treaty had expired and therefore did not invite Japan to participate. Although the Japanese government denied this contention, it apparently did not insist on participation. See H. G. W. Woodhead, article in *Shanghai Evening Post*, February 11, 1933.

<sup>5</sup> Text of 1930 agreement and exchanges of notes in Great Britain, Foreign Office, Treaty Series, No. 20 (1930) CMD 3563; also in United States Department of State, Executive Agreement Series (Washington, 1930), *Publication No. 362*, No. 37.

tual consent. In 1933, pending future settlement of the question of extraterritoriality, the agreement was continued to April 1936. In December 1935 it was announced that it would be continued for a third time to April 1939.<sup>6</sup>

The new regime consists of an ordinary civil and criminal court known as the District Court for the First Special Area in Shanghai, and a court of appeals known as the Kiangsu High Court, Second Branch. The jurisdiction of these courts is the same, generally, as that of the Provisional Court with the addition that appeals may be taken to the Kiangsu High Court in the Settlement and from there to the Supreme Court of China. The District Court administers Chinese law in the Settlement and is specifically required to take into account the Land Regulations and By-laws. Only Chinese judges serve on the bench and they hear and decide cases without the assistance of foreign assessors or consular deputies as formerly. The police attached to the Court are appointed by the President of the Court on recommendation of the Municipal Council. Warrants and summonses are valid when signed by one of the judges. Both Chinese and foreigners may practice before the Court along with the prosecutors of the Municipal Council. Finally, a Committee of Arbitration was appointed, consisting of two representatives of the foreign powers and two representatives of the Chinese government, to settle any differences arising out of the execution of the agreement.

<sup>6</sup> Text of renewal of 1930 agreement in League of Nations, Treaty Series, Vol. CXLII, No. 2354, p. 355; also in United States Executive Agreement Series (Washington, 1933), *Publication No. 501*, No. 45. Notice of 1936 renewal in *North China Herald*, January 1, 1936.

Almost identical agreements were signed by the authorities of the French Concession for the rendition of the Mixed Court of that area. Two Chinese courts similar to those of the settlement were established in August 1931. The French agreement was to run until April 1933 and has since been extended in conformity with the extension of the Settlement agreement. A Committee of Arbitration was also established in the Concession to deal with differences arising out of the execution of the agreement.<sup>7</sup>

The Mixed Courts of the two foreign areas, therefore, finally gave way to the establishment of Chinese courts with jurisdiction over all criminal and civil cases except those in which only foreigners possessing extraterritorial rights are involved and cases in which the governments of the foreign areas are the defendants. The latter cases are handled by the Court of Consuls and the French Consular Court, respectively.

The Chinese Courts in the International Settlement and in the French Concession have been functioning for a number of years and some estimate can be made of their work. As might be expected, the courts have neither come up to the expectations of their Chinese proponents nor have they fulfilled the dire predictions of the foreigners who opposed their introduction. In spite of the more permanent character of these courts and in spite of the fact that they are a part of a national judicial system, their jurisdiction and their decisions are still conditioned by the existence of the system of extraterritoriality. The judges are called upon to enforce both national law and rules and

<sup>7</sup> The formation of the committee was included in the agreement.

regulations of the foreign areas, which are often in conflict. Because of the number of nationalities concerned in many of the cases, judges and practicing attorneys must be well acquainted with both Anglo-Saxon and Continental legal systems.<sup>8</sup> The very broad legal training required limits the number of proficient judges and attorneys available. These difficulties are recognized by both Chinese and foreigners as remediable in the future.

The chief criticism of the Provisional Court was the political interference from outside. Unfortunately the succeeding Chinese courts have been subject to the same criticism. Although the courts seemed to be functioning well during 1930 and the first part of 1931, the anti-Japanese boycott and the resulting Sino-Japanese hostilities affected the work of the courts in such a way as to constitute a denial of justice to many persons. The prosecution of cases growing out of destruction of property during the boycott was practically prevented by political orders and the intense anti-Japanese feeling at the time. The Chairman of the Municipal Council reported on this point to the annual meeting of ratepayers as follows:

Aside from being a direct contributing factor to the present relations between China and Japan, the failure of the Special District Courts to fully recognize or discharge their judicial functions during a time of crisis has shaken to its very foundations, if not entirely demolished any hope which the foreign community might have entertained that the Chinese government

<sup>8</sup> In a case heard before a Chinese judge in 1930 the plaintiff was Swiss, the plaintiff's attorney was British, the defendant was Russian, and the attorney for the defendant was French. *China Weekly Review*, June 7, 1930.

would eventually succeed in establishing in the International Settlement, courts in which the foreign community could have at least a moderate, if not a full degree of confidence and respect.<sup>9</sup>

Although this statement may not appear fully justified in all its implications, the fact remains that political pressure has at times carried more weight than any abstract idea of justice.

The failure of these courts during abnormal conditions, however, should not prevent an objective appraisal of their work. Since 1932, under relatively normal conditions, the courts have functioned in a creditable manner. This is particularly true in respect to criminal cases. Punishments have been adequate and cases have been conducted speedily, with a minimum amount of political interference. The Municipal Advocate for the Settlement reported that, "During the year 1933, the criminal divisions of the Courts have, with the assistance of the Council, operated smoothly, efficiently, and without friction."<sup>10</sup> In 1935, as many as 40,081 major and minor criminal cases were prosecuted to completion, and ninety-five per cent of the persons charged were convicted.<sup>11</sup>

With respect to civil cases, the chief difficulties are the continued attempts of Chinese government ministries to order the courts to enforce administrative ordinances in the foreign areas, the delays in bringing cases to trial and in hearing appeals, and the need of correlating several different concepts of law. The foreign authorities contend

<sup>9</sup> Shanghai Municipal Council, *Annual Report*, 1932, p. 7.

<sup>10</sup> *Ibid.*, 1933, p. 30.

<sup>11</sup> *Ibid.*, 1935, p. 121.

that the courts have no power to enforce Chinese administrative law within the foreign settlements, and this is still a matter of dispute.<sup>12</sup> Delays in bringing cases to trial and in hearing appeals are not peculiar to Chinese courts. The remedy for this defect is the inauguration of more efficient procedure and the employment of a larger staff. The correlation of the various concepts of law by judges will present difficulties as long as the present regime is continued but can be partially overcome by more highly qualified judges.

In spite of these criticisms of the new Chinese courts, it cannot be denied that there has been a steady improvement in their conduct, marred only by a failure to operate under abnormal conditions, a situation which has occurred in many other countries.

The administration of justice in Shanghai has run a long and varied course. The difficulties encountered have been due to many factors, some of which are traceable to the indefinite provisions of the first treaties while others resulted from problems encountered in the development of the foreign settlements. One fact is outstanding: An institution or agency which was created hastily to meet an immediate need has often been retained without a definite basis or adequate organization. The Mixed Courts were such institutions. The first treaties provided for extra-

<sup>12</sup> If such enforcement were permitted it would break down the heretofore exclusive jurisdiction exercised by the foreign authorities. To date there has been only one instance of the enforcement of Chinese laws in the Settlement. By special agreement, the Settlement officials agreed to supervise the prosecution of Chinese rolled-tobacco tax cases and certain stamp tax cases.

territoriality but did not necessarily presuppose the development of foreign municipal governments in the Treaty Ports which they opened to trade. It could not be foreseen that the foreigners would assert their control over special areas and establish their jurisdiction over Chinese residents within these areas as they actually did. Later the decision to permit Chinese to reside in the foreign settlements in Shanghai raised a wholly new problem in the administration of justice, which the foreigners attempted to solve by establishing the mixed courts. Yet these courts were set up without definite regulations or agreements as to their competence and jurisdiction, and were eminently unsatisfactory from the beginning.

While the mixed courts were in existence the objective of the foreigners was to keep within the treaties but remain as free from Chinese control as possible, while the objective of the Chinese was to oppose foreign influence and prevent foreign encroachment. With the rendition of the Mixed Courts the Chinese have almost won their struggle and the passing of extraterritoriality will mark the complete abolition of foreign judicial privileges.

**PART TWO**

**International Problems at Shanghai**

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## CHAPTER VIII

### THE SETTING FOR SHANGHAI'S PROBLEMS

**T**HE historical development of the International Settlement, the French Concession, and the Chinese Municipality has been traced and their respective governments have been described. This is the framework into which can be fitted a discussion of the most important problems found in Shanghai today. These, however, can be understood fully only when certain characteristics of the city have been emphasized.

Shanghai's favorable geographic position has been a major factor in its development as a world port. It is almost equidistant from the large industrial centers of America and Europe, being 10,684 nautical miles from New York via Panama, and 10,504 nautical miles from Liverpool via Suez.<sup>1</sup> It is also centrally located with respect to Far Eastern ports, being 860 nautical miles from Kobe, 750 from Tientsin, and 850 from Hong Kong. Within fourteen miles of the Yangtze River, the greatest trade artery in the country, Shanghai is also connected to Nanking and Peiping by rail, and to Nanking, Canton, Peiping, Hankow, and even far Szechwan by air.

Trade statistics for the last fifty years, if presented in graphic form, would make Shanghai the funnel through

<sup>1</sup> See Whangpoo Conservancy Board, *The Port of Shanghai* (Shanghai, 1932).

which China's trade runs, with much smaller funnels at Tientsin and Canton; for in this period fifty per cent of all foreign trade with China has gone through the port of Shanghai.<sup>2</sup> The foreign trade of China in 1934 was valued at more than half a billion dollars (United States currency) and was distributed among fifteen or twenty nations. However, fifty per cent of China's imports came from the United States, Japan, and Great Britain, and in return these three nations took thirty-eight per cent of China's total exports.<sup>3</sup> China's trade has decreased during the past few years, owing to the depression and more recently to the silver situation.<sup>4</sup>

The figures for foreign investments also reveal the importance of Shanghai and indicate the economic and political implications of its position. The total foreign business investment of the United States, Great Britain, and Japan in China, excluding Manchuria, in 1932 was \$1,437,000,000 (United States currency). Of this total, \$1,049,000,000 was located in Shanghai.<sup>5</sup> The following table shows the distribution of direct business investment by the three powers mentioned in 1931, in millions of dollars (United States currency) :

<sup>2</sup> See reports of the Chinese Maritime Customs Service and the monthly trade reports of the United States Bureau of Foreign and Domestic Commerce.

<sup>3</sup> United States Bureau of Foreign and Domestic Commerce, *China Monthly Trade Report* (Annual Survey for 1934), Washington, D.C., February 1, 1935, pp. 24-25. Incomplete figures for 1935 indicate a general decrease in the total volume.

<sup>4</sup> *Ibid.*

<sup>5</sup> F. V. Field, *Handbook of the Pacific* (New York, 1933), p. 356.

Area	Great Britain	Japan	U.S.A.	Total	Per- cent- age
Shanghai .....	\$737.4	\$215.0	\$ 97.5	\$1,049.9	52+
Manchuria .....	.....	550.2	....	550.2	28+
Rest of China (in- cluding Hong Kong)	226.0	108.9	52.7	387.6	19+
	<hr/> \$963.4	<hr/> \$874.1	<hr/> \$150.2	<hr/> \$1,987.7	<hr/> 100

It can be seen from this table<sup>6</sup> that British investments in Shanghai alone are almost equal to Japan's investments in both Shanghai and Manchuria. These statistics, however, do not take account of the developments since 1931 in Manchuria, where Japanese investments have increased greatly. Yet it is significant that Japanese investments in Shanghai increased more rapidly between 1914 and 1931 than did Japanese investments in Manchuria.<sup>7</sup>

There has also been a heavy concentration of Chinese capital in Shanghai owing to the security of the foreign settlements. This has resulted in large-scale speculations. It has been reported, for instance, that a piece of land in the heart of Shanghai in 1933 was worth more than an equal piece in the heart of either New York or London. This flight of capital from the interior of China to Shang-

<sup>6</sup> Table adapted from C. F. Remer, *Foreign Investments in China* (New York, 1933), p. 97. Professor Remer gave a more recent estimate on total investments in China as follows: Great Britain, \$1,000 million; Japan, \$500 million; United States, \$200 million. See National Foreign Trade Council, *American Prospects in the Orient, Report of the American Economic Mission to the Far East*, p. 26. So many factors enter into business investments that accurate figures are not easily available. The failure of the Raven enterprises probably has affected the totals of American investment in Shanghai.

<sup>7</sup> Quoted in Remer, *op. cit.*, pp. 97 ff.

hai has made it extremely difficult for the national government to obtain funds necessary for rural rehabilitation.

With the effects of the depression, which came late to Shanghai, the speculative bubble seems to have burst and deflation to have set in. The failure of firms like those of the Raven interests is indicative of the deflation process. How far this will affect the economic position of the city is yet to be determined.

The significance of Shanghai to foreign powers has been based largely on these various economic factors. It has been the policy of the powers to protect their capital investments, their trade, and their citizens, and at the same time to use the means of protection, armed force, to gain further privileges from China. This was true in 1854, and has been true at various times since that date. The policy is most often used when a nation feels that its economic position is insecure. Thus the British, supported by French and Americans, pursued a policy of "gunboat diplomacy" into the beginning of the present century; but with the gradual consolidation of the British economic position in China, fewer privileges were asked for, since fewer were needed. Japan, however, with a growing trade and industrial economy, has not had the security of Britain, or of the United States, and therefore has felt the need of protecting her investments, her trade, and her citizens by frequent resort to pressure politics for the gaining of additional privileges or actual control in parts of China. Because of the concentration of foreign investments and trade in Shanghai, this city on many occasions has become a focal point in the pursuit of a China policy by the powers.

The significance of Shanghai to China can be under-

stood when it is realized that the Chinese government draws from forty to fifty per cent of its revenue from the Shanghai customs.<sup>8</sup> Control of the Shanghai area is vital, then, to the successful operation of any Chinese government which attempts to exercise sovereignty over central China. For this reason Shanghai has long been the headquarters for many Chinese politicians, and in a sense has served as a secondary capital. In China's numerous civil wars, control of the Shanghai area, which has meant control of the Shanghai revenue, has been the highest prize that any war lord could hope to gain. To a great extent this has meant that the leaders of Chinese business and finance, secure in Shanghai's foreign settlements, could dictate to or bargain with the political factions striving for power outside the city, and this they have done on numerous occasions.<sup>9</sup>

The interest of the foreign powers and of the Chinese government in Shanghai is often reflected in the activities of local groups, many of which concern themselves with municipal affairs. Chief among these are the business groups, such as the various national Chambers of Commerce, organized expressly for the purpose of promoting and protecting business. The British Chamber of Commerce and the general body representing all of the national groups, the Shanghai General Chamber of Commerce, are probably most important. The Japanese Cham-

<sup>8</sup> It is also alleged that much illegal revenue is gained in the Shanghai area.

<sup>9</sup> In 1927, for example, when the Shanghai Chinese bankers supported General Chiang Kai-shek against the Communist wing of the Kuomintang.

ber of Commerce and the Japanese Residents' Association effectively present the demands of the Japanese, and the latter group virtually controls the votes of the Japanese ratepayers in the annual elections of the International Settlement.<sup>10</sup> There is also a British Residents' Association and a similar American group, both of which are mediums for the expression of national opinion. Among the Chinese there are additional business organizations, including the older guilds, such as the Ningpo Gild, and there is a Chinese Chamber of Commerce and a Chinese Bankers' Association. There is also a Chinese residents' group, the Chinese Ratepayers Association.

As a rule these private groups represent special interests, but there are exceptions, the most important of which is the Joint Committee of Shanghai Women's Organizations. This organization is made up of various national associations such as the American, British, and Chinese women's clubs. It has taken the lead in focusing the attention of the community on such questions as child labor, housing, and the rickshaw problem, and on these three questions its activities have been followed by definite action by the municipal authorities. Among other pressure groups is the local branch of the Kuomintang, which has been active at various times on local questions. In addition there are a number of under-cover organizations which are said to exert an influence in inverse proportion to what is known about their activities. These are the secret societies such as the "Blue Shirts," the Communists, and the or-

<sup>10</sup> The Japanese Residents' Association is an incorporated body with a salaried president and vice-president.

ganized criminals, similar to those found in every large city.

While it is obviously impossible to measure the part played by these groups in negotiations concerning any municipal problem, it is important to recognize their existence and the possible influence which they may have on the solution of such problems as industrial regulation, settlement extension and extra-settlement roads, national representation in the governments of the foreign areas, the neutrality and protection of the foreign settlements, and the rendition of these areas to China. It is important, because it is these problems which collectively compose the Shanghai problem.

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## CHAPTER IX

### INDUSTRIAL AND LABOR PROBLEMS

**M**ODERN large-scale industry in Shanghai is largely a development of the last twenty years. Small factories, many of them hardly more than artisan's shops, existed before the World War, but after 1914 all types of industry received a tremendous impetus due to the wartime scarcity of foreign products. Shanghai's industrialization was furthered by the large concentration of capital in the foreign settlements which provided money for investment and construction. The plentiful supply of cheap labor lessened production costs, as did the fact that factories in the foreign settlements escaped the variable Chinese taxes. In addition the absence of any industrial regulations by either the authorities of the foreign settlements or the Chinese government allowed the factory owner to disregard questions of hours of work, wages, and conditions of labor.

The postwar industrial development was checked by the depression. Since 1933 the number of industrial undertakings has decreased. It was reported in 1935 that some 3,600 factories were operating in the Shanghai area, giving employment to over 300,000 workers.<sup>1</sup> Two-thirds of these factories are located in the International Settlement and most of the remaining number are in the Chinese

<sup>1</sup> American Council, Institute of Pacific Relations, *Far Eastern Survey*, November 20, 1935; also *Statistics of Shanghai*.

districts adjacent to the Settlement to the north and east. The majority of the factories are owned by the Chinese, while the foreign factories are primarily owned and operated by British and Japanese.

Large-scale industries, including silk reeling and weaving, cotton spinning and weaving, tobacco factories, foundries, and breweries, account for over half the industry in the urban area. A wide variety of products ranging from bone carvings and porcelain to soap and paper boxes are produced in small establishments.

#### INDUSTRIAL CONDITIONS

The conditions under which laborers work in Shanghai are said to be as bad as in any city in the world. Although a few well-constructed modern factories are to be found, most establishments are constructed with little regard for the safety or health of the workers. Inadequate stairways, insufficient exits, and improper storage of inflammables have often resulted in unnecessary loss of life in fires and explosions.<sup>2</sup>

The worst conditions are to be found in the smaller establishments employing from fifteen to one hundred workers. Many of these are reconstructed "li" houses or alley dwellings. Two or three of these houses may be thrown together, with the partitions removed, the stairways cut off, and the number of exits reduced, and with machinery installed with little regard to anything but in-

<sup>2</sup> See Shanghai Municipal Council, *Annual Reports*, 1925-1935, for records of fires and explosions, particularly in rubber and celluloid factories.

creased production. On the whole, foreign-owned factories possess better physical equipment than do Chinese establishments; yet exceptions can be found, and it has been stated that the small Japanese factories are little better than those of the same type operated by the Chinese.<sup>3</sup>

Criticisms of the physical plant are equally applicable to hours, wages, and conditions of labor. Living conditions in the factory districts are similar to those of any large industrial area. Most of the workers not under contract live in the crowded factory districts or across the river in Pootung. The working day is from nine to twelve hours, six or seven days a week. Many factories maintain two shifts, operating day and night. It is quite common for employers to require a certain volume of production from their employees, failure to achieve this being penalized by fines. Absence from work due to sickness is usually treated in the same way, fines being assessed against wages or work without pay being required. No adequate survey of wages has been made, but it is generally agreed that wages in most industries do not represent a living wage and make possible only a bare subsistence.<sup>4</sup>

Widespread use of child labor has been characteristic of much of Shanghai's industrial development. This has been so prevalent that in certain industries special-sized machinery has been constructed for child operators. Children are employed at the earliest age possible according to the nature of the work, many being under six years of

<sup>3</sup> Statements of officials in Shanghai. See also report on industrial accidents, Shanghai Municipal Council, *Annual Report*, 1935, pp. 38-40.

<sup>4</sup> *Statistics of Shanghai* contains tables of wages in the principal industries.

age. Most children are employed under contract or apprentice labor.

Contract labor for both women and children exists in many of the larger factories, particularly in the textile industry. The employer contracts with an individual contractor for the necessary supply of labor at a fixed rate. The contractor, in turn, secures laborers from various subcontractors who have secured their supply from the rural areas where heads of families for a sum of money sell the services of young women and children for a three- or four-year period. During the contract period these women and children are wards of the subcontractor, who provides them with food which is poor, clothing which is meager, and shelter which is crowded. He charges them for these services, which must be worked off before they leave his employ. After the original contract expires they must also make up the number of working days lost. These factors often add two or three additional years of labor, after which the health of the workers is so broken that they are no longer employable and others are found to take their place from the always plentiful supply.

Children are also employed under an apprentice system in industries such as shipbuilding, woodworking, and printing. The apprenticeship is usually for a three- to five-year period. In some industries a small money wage is paid to the family of the child; in others the only reward is the training acquired. As in contract labor, only the barest shelter is provided and the apprentices often suffer from lack of nourishment and from insufficient clothing. While a few model establishments, both Chinese and foreign, treat their apprentices in a tolerable manner, the lot

of the apprentice in most industries is as bad as the lot of the contract laborer. Under either system the worker is in a condition of virtual slavery.

#### INDUSTRIAL REGULATION

These conditions of labor are partly the result of a disregard for human life and partly due to the lack of education among employers with respect to efficient industrial management. The absence of industrial regulation means that any alleviation of these conditions has been entirely voluntary, and educating the employers to the value of such voluntary regulations has been slow and at times seemingly impossible.

Both the International Settlement and the French Concession possess a limited power to regulate safety and sanitation through their licensing systems.<sup>5</sup> Such regulation applies chiefly to the construction of buildings and to the elimination of fire hazards, providing some control over the misuse of storage space in buildings and the blocking of exits and stairways. They have no power to regulate hours, wages, or conditions of labor. It is agreed that such regulation could be most easily achieved through an expanded license power. Licenses could then be granted only to those factories which complied with the industrial regulations agreed upon. However, regulations by the licensing power or by any other means could be effective only if enforced concurrently in all three municipalities. The authorities of each municipal area have been reluctant

<sup>5</sup> For the International Settlement, Regulation XXX and By-laws VIIIa, XXXIII, and XXXIV provide this power. For the French Concession, Consular ordinances provide it.

to attempt enforcement of regulations in their area alone. The officials of the International Settlement and the French Concession have not been willing to risk the exodus of factories to Chinese areas. The Chinese authorities cannot enforce laws within the foreign settlements or on foreigners possessing extraterritorial rights. The problem of enforcement, then, revolves around the ability of the foreign and Chinese authorities to agree on some method of simultaneous enforcement in all three municipal areas.

Since almost all industries are located in the International Settlement and adjacent Chinese territory, the problem from the beginning has been one chiefly between the Settlement authorities and the Chinese. The French Concession's chief interest in the matter has been the possible effect of any solution on the future status of the foreign areas.

After the World War several groups in the International Settlement interested themselves in the problem of industrial regulation. The beginning was made in the autumn of 1922, when the Municipal Council proposed the voluntary limitation of child labor by foreign employers in the Settlement. The ineffectiveness of this proposal made clear the obstacles to voluntary restrictions and the need for legal regulations. At about this time the Joint Committee of Shanghai's Women's Organizations took up the problem, and their representations to the Municipal Council largely induced that body to authorize an investigation of child labor in the Settlement.<sup>6</sup>

The Child Labor Commission appointed by the Council

<sup>6</sup> *Shanghai Municipal Gazette*, June 14, 1923.

conducted its investigations in the twelve months following June 1923, and thereafter submitted a report.<sup>7</sup> After much discussion and on the insistence of interested groups, the Council adopted Part III of this report, the principal recommendation of which was for the adoption of a By-law giving the Council power to regulate conditions of labor of children up to fourteen years of age employed in the Settlement.<sup>8</sup>

In the Annual Meeting of the Ratepayers in 1925 such a By-law was presented but failed of adoption. It was also voted down in a special meeting on June 2 of the same year. The latter failure to adopt the By-law was due to the repercussions of the May 30 affair, and to the fact that two other By-laws were presented at the same time, both of which were opposed. Further attempts to regulate child labor were postponed pending the establishment of general factory laws.

#### THE CHINESE FACTORY ACT

Meanwhile, there were indications of a growing Chinese recognition of the need for industrial regulation. Provisional factory regulations had been signed by the Peking government in March 1923, but lacking means of enforcement they were never operative.<sup>9</sup> The rise of the Nationalist government in Nanking brought further action. After some study and investigation the Nationalist

<sup>7</sup> "Report of Child Labor Commission," *Shanghai Municipal Gazette*, July 19, 1924.

<sup>8</sup> *Ibid.*, p. 260.

<sup>9</sup> *Ibid.*, p. 271. See also Tawney, *Land and Labour in China*, pp. 121 ff.

government in 1928 promulgated a Factory Law for the whole of China.<sup>10</sup> The law was carefully drafted but was designed to apply to an ideal situation which did not exist. It was promulgated in this form in spite of the friendly criticism of foreign experts. The Chinese government announced that the enforcement of the act would commence in February 1931 but was persuaded to postpone enforcement until later because of the admitted difficulties of exercising jurisdiction in the foreign settlements in Shanghai.

From December 1930 to September 1931, studies and investigations conducted by the Chinese government and the Shanghai Municipal Council and several private groups, had convinced both the foreigners and the Chinese that the act could be enforced only gradually. Definite recommendations were then made to the national government as to the sections of the act which might be immediately enforceable.<sup>11</sup> To aid in these investigations Dr. H. H. Kung, then Finance Minister of the Nanking government, invited the International Labour Organization to send a delegation to Shanghai, and in September 1931 M. Camille Pone and Dame Adelaide Anderson arrived in the city as representatives of the Geneva organization. As a result of their investigations and of conferences between Chinese and foreign authorities during several months there was drawn up an unofficial statement of the basis upon which the Chinese and foreign authorities at Shang-

<sup>10</sup> Tawney, *op. cit.*, pp. 154-55 ff. See also Shanghai Municipal Council, *Annual Reports*, 1928-1935, under "Industrial Regulation."

<sup>11</sup> See Shanghai Municipal Council, *Annual Report*, 1933, pp. 35 ff., for summary of recommendations and negotiations.

hai might co-operate to enforce provisions of the factory law. This was reported to be as follows :

(1) That the authorities of the International Settlement and the French Concession agree to take in factory inspectors who are trained and recommended by the Chinese government to inspect the factories situated in their respective localities, and that these inspectors are to be supervised from time to time by the inspectors of the central Inspectorate;

(2) That the inspectors for the International Settlement and the French Concession will report regularly their results and difficulties to the Chinese government as well as to the Settlement and Concession authorities ;

(3) That there should be a regular conference every month for all the inspectors of the Municipality of Greater Shanghai and the International Settlement and the French Concession to exchange views and co-operate to secure remedies.<sup>12</sup>

Prior to the negotiation of a formal agreement on the subject, the Council of the International Settlement prepared the way for enforcement of the Chinese Factory Act by offering an amendment to By-law XXXIV which would give the Council the right to license factories under whatever conditions the Council might establish. By this amendment the Council could adopt regulations in conformity with those adopted by the other two municipal areas and enforce them through the licensing provision. Action was postponed in 1932 because of the Sino-Japanese hostilities but the amendment was passed by an overwhelming majority in 1933. After receiving the approval of the Consuls and the Ministers of the Treaty Powers as provided in the Land Regulations, there developed a belated opposition among the Chinese, with result that the

<sup>12</sup> Shanghai Municipal Council, *Annual Report*, 1932, pp. 38 ff.

amended By-law still lacks final approval of the Chinese national government.<sup>18</sup> The Chinese contended that the Land Regulations could not be interpreted to give the Council power to regulate industry. The origin of the opposition appears to have been among certain Chinese factory owners who objected to regulation and among Chinese who feared the granting of any additional power to the Council.

Somewhat prior to action on the amendment to By-law XXXIV, negotiations were opened between the Settlement authorities and the Secretary-General of the Chinese Municipality of Greater Shanghai for the purpose of exploring the possibilities of agreement. The Municipal Council contended that any enforcement of the Chinese Factory Act must be carried out under their direct supervision and control. The Chinese asserted that since they had never relinquished sovereignty over the territory occupied by the foreign settlements their own officials should be allowed to inspect factories in these areas and enforce the law as in Chinese territory. In the face of these apparently incompatible arguments it was suggested that the so-called Pone proposals (quoted above) be taken as a basis for discussion. These proposals were not wholly acceptable to the Chinese, who countered with the suggestion of a joint inspectorate to operate in both the International Settlement and Chinese territory, to be chosen partly by the Chinese municipal government and partly by the Municipal Council, and jointly responsible to both groups. Since this would have meant the sharing of its heretofore

<sup>18</sup> *Ibid.*, 1933, p. 36.

exclusive authority in the Settlement, the Council rejected this proposal and suggested a separate inspectorate for each area with inspectors for the Settlement nominated by the Chinese but under the control of the Council, thus substituting the idea of co-operation for that of joint control.

After 1932 Japanese insistence on participation in all negotiations with the Chinese further complicated settlement of the problem. Until 1936 no agreement on regulation had been reached, although the Chinese delegations to the International Labour Conferences of 1933, 1934, and 1935 explained the Chinese position and blamed foreign intransigence for bad industrial conditions in Shanghai.<sup>14</sup>

The Council in the meantime, using its limited powers to inspect premises and to regulate with respect to sanitation, fire hazards, and safety, carried on a form of factory regulation. In June 1932 Miss Eleanor M. Hinder was appointed to the Council's staff in charge of industrial matters. Using the powers and regulations just mentioned, Miss Hinder and her assistants have been able to bring about a considerable improvement in many factories.

In spite of delays, the Settlement authorities continued negotiations with the Chinese for an agreement under the Chinese government's Factory Law. A draft agreement was finally drawn up in May 1936 which received the approval of the Chinese government and of the Municipal

<sup>14</sup> The International Labor Conference in 1919 at Washington specifically excepted China from the operation of several conventions relating to hours of work. Inability of the Chinese to enforce such agreements in the foreign settlements and leased territories was given as the reason for this action (*Shanghai Municipal Gazette*, July 19, 1924, p. 263).

Council. The terms of the agreement were reported as follows:

1. The Shanghai Municipal Council under authority delegated by the Chinese authorities agrees to apply in the International Settlement those portions of the Factory Act together with the by-laws and regulations in connection therewith which are enforced in Chinese territory and which are agreed upon in negotiations from time to time.

2. An inspectorate shall be established within the Council which shall consist of equal numbers of inspectors nominated by the Chinese authorities and by the Council.

3. The inspectors shall have the following qualifications:

a) Knowledge of the Chinese and English languages.

b) Knowledge of the Chinese Factory Law and its application.

c) Knowledge or experience of any of the following: Industrial chemistry, building construction, sanitary engineering, electrical engineering, mechanical engineering, and statistics or other experience of use in the work required.

4. All inspectors shall serve a period of six months before confirmation of appointments.

5. Remuneration of inspectors shall be upon the basis of qualification and experience.

6. The inspectorate shall function in accordance with the Chinese factory inspection laws.

7. Enforcement of Chinese Factory Laws in cases of delinquency shall be by proceedings in the courts.

8. The Council agrees to report to the Chinese government upon a practical basis to be agreed upon.

9. The agreement shall remain in force for three years subject to termination thereafter by either party giving six months notice to the other party.

10. The agreement must be approved by the Consular Body before it can become effective.<sup>15</sup>

<sup>15</sup> *North China Herald*, July 1 and 15, 1936.

It was also announced that a similar agreement would be sought by the Chinese government with the French Concession.

On submission of this draft agreement to the Consular Body for final approval, that body found it unsatisfactory. It was reported that the Treaty Consuls considered that the agreement as it stood constituted a partial abrogation of treaty rights since it permitted the enforcement of a Chinese law against foreigners possessing extraterritorial privileges. The Consular Body suggested that it be amended to provide inspection by the Chinese authorities only of those factories not under extraterritorial ownership and that the Municipal Council be given power through the Land Regulations and By-laws to inspect factories under extraterritorial ownership. This action of the Consular Body represents a precise interpretation of treaty rights. It is not yet clear whether the Chinese government will accept the suggested amendment or not; nor is it clear whether this action of the Consuls was intended as a "face-saving" device for the Municipal Council, which may have been unwilling to antagonize the Chinese by presenting the same suggestion itself. The refusal, to date, of the Chinese government to accept the proposed amendments of the Consular Body would seem to bear this out.

If this agreement goes through as announced, it will mark only a step toward the settlement of another Shanghai problem. It is important to remember that the final test of the agreement will be the way it works. Only enforcement of the law can determine whether this will prove a new advance in Sino-foreign co-operation or merely another source of Sino-foreign friction.

## THE RICKSHAW PROBLEM

The problem of industrial regulation concerns mainly the factory workers, yet there are probably twice as many laborers outside the factories who are in need of protection and who, for the most part, exist on an even lower standard of living than the factory workers. No one knows their wage scale; no whistles mark their working hours. Recently, however, the authorities of the International Settlement have been induced to take action for the benefit of one group of these workers, the rickshaw men.

As in the case of child labor, it was the agitation of several interested groups in the Settlement which finally focused attention on the plight of the rickshaw pullers. As a result of this pressure, the Council appointed a Rickshaw Committee in September 1933 to "investigate in all its aspects and to report upon the operation of rickshaws in the Settlement and to make recommendations for the improvement and reform of the present system of operation."<sup>16</sup> A final report with certain dissenting opinions was submitted in February 1934.<sup>17</sup>

The Committee found that all of the commonly reported abuses were actually present in the rickshaw business and that the plight of the pullers was very real.<sup>18</sup> A total of 69,041 public and private rickshaws were reported licensed in the three municipalities. The Settlement accounted for 9,990 public rickshaws and about 13,000 pri-

<sup>16</sup> Shanghai Municipal Council, *Report of the Ricsha Committee, 1933-34* (Shanghai, 1934), p. 3. Either "ricsha" or "rickshaw" is correct. The latter spelling is in more common use. The term is a contraction of "jinricsha."

<sup>17</sup> *Ibid.*      <sup>18</sup> Statistics from the *Report of the Ricsha Committee*.

vate rickshaws. About 17,000 public and private rickshaws were reported licensed by the French authorities, with the remainder licensed in the Chinese city. The Committee estimated that two or three pullers use a single vehicle, working in shifts both day and night.

- The Committee reported that a virtual monopoly existed in dealing in licenses, and that there were 144 licensees for the 9,990 public rickshaws in the Settlement. The original licensees would subcontract their rickshaws to individuals, who in turn rented them to the pullers, with the result that the hire-charge to the puller was so exorbitant as to permit him only a bare subsistence. The puller was held liable for traffic fines and damage to the rickshaw. To
- pay these charges he was often forced to borrow money at usurious rates of interest. A further abuse resulted from the pullers of privately licensed rickshaws hiring out in competition with the public pullers. In other words, the rickshaw business in the International Settlement (and probably in the French Concession and the Chinese city) had become a "racket," in which the pullers suffered the most while the public suffered in accidents due to the use of dilapidated vehicles.

The Committee recommended an initial transfer of 2,000 licenses to an organization approved by the Council and a further transfer to it of 2,000 licenses after a year; and a majority of the Committee proposed a co-operative ownership scheme for a maximum of 500 licenses. The Committee was unwilling to recommend that the number of public rickshaws be reduced below 10,000 but proposed that the Council should review the matter after two or three years. Rickshaw pullers as well as the vehicles were

to be licensed by the Council, and the Council was to attempt to ameliorate the pullers' living and working conditions. The Committee also approved a model rickshaw, the chief features of which were better springs and more comfortable cushions.<sup>19</sup>

A minority report was submitted by a Chinese member of the Committee in favor of municipal ownership and operation of the rickshaw business through the organization of a company under the Council's auspices and the formation of a co-operative society. This proposition was not accepted by the Council, which went ahead on the basis of the majority report. To carry out the Committee's recommendations the Council appointed a Rickshaw Board. Since the Council had not accepted the first three recommendations of the Committee — to effect transfer of licenses to a new company and to a co-operative society — the Board was charged with the supervision of a register of owners, with issuing licenses to pullers and owners, and with inspection and improvement of vehicles and the publication of a fixed tariff for rickshaw hire.

The Board proceeded to put into effect the various reforms requested by the Council as a result of the report of the Rickshaw Committee. These reforms were listed in the *Annual Report* for 1934 in four categories: (1) abolition of the old licensing system and the institution of a register of owners; (2) a reduction and standardization of the hire charges to pullers; (3) the licensing of both private and public pullers; and (4) an improvement in the type of public rickshaw used. In addition, certain recom-

<sup>19</sup> *Report of the Ricsha Committee*, p. 25.

mendations of the Council as to publication of fare charges, the campaign against "tramp rickshaws," and co-operation with the French and Chinese authorities were carried out to a limited degree.

Since one of the avowed objects of the investigation was to "ameliorate the condition of the pullers," the Board sponsored the "Puller's Mutual Aid Association," whose purpose was to provide medical aid and better living conditions and to unite the pullers in an organized group. The benefits of this Association accruing to the pullers are to date dubious. The Association exacts about eleven coppers per puller per day as dues to the organization, part of which goes to pay the licenses of the pullers. Two health and recreation centers have been opened temporarily, and it is expected that medical and other services will be provided by the funds of the Association.

The Rickshaw Board has been operating since May 7, 1934, and it is possible to determine partially its effectiveness. Observers in Shanghai have pointed out in public statements during the last six months that the rickshaws have been slightly improved but that the puller makes little more than he did before. Although hire charges have been officially reduced, license monopolies are still in operation. The chief criticism of the whole system is that there are too many profit-takers between the actual owner of the rickshaw and the puller. For example, a person may own a certain number of rickshaws; he registers their ownership under a foreigner's name, paying him for it; he sublets his vehicles to a contractor, who in turn may sublet to another contractor, who in turn rents the rickshaw to the puller. Each one along the line must take his profit. Add

to this repair charges, fines levied against the puller, and the lucrative business of loaning money to him at exorbitant rates of interest, and there is little left to provide the puller with anything like a living.

The whole attitude of the Rickshaw Board, of the Council, and of most of the citizens in Shanghai is one of paternalism. Instead of adopting a thoroughgoing and drastic reform, which could have been done, to correct the evils of the trade, a bundle of compromises was produced which were designed so as not to hurt the owners, the contractors, or any of the vested interests of the business, with the hope that in the shake-up, the pullers would receive incidental benefits. It has been alleged that the average profit of the owners has been 141 per cent, and with the depression growing worse in the city it is not to be expected that this attempt to solve a serious labor problem will be productive of much good. What makes the problem even more acute is the fact that this attempt in the International Settlement only reaches about a third of the men who follow this occupation, as the French Concession and the Chinese city have so far been unable or unwilling to do much about the problem.<sup>20</sup>

#### ORGANIZED LABOR

Organized labor in Shanghai is almost wholly a development of the postwar period. Prior to the World War, the gild system in China was the nearest approach to labor organization. The gild, however, usually included

<sup>20</sup> See speeches of ratepayers on this subject in Annual Ratepayers meetings, 1935 and 1936, reported in Shanghai Municipal Council, *Annual Report*, 1925, and *North China Herald*, April 21, 1936, also *Christian Science Monitor*, January 21, 1935.

master and apprentice, or employer and employee, in its membership. In 1919 an incipient trade unionism developed in the larger industrial centers including Shanghai. After three or four years of suppression it again flourished and rose to formidable strength along with the tide of nationalism which swept the Kuomintang into power in 1927.<sup>21</sup>

Between 1924 and 1927, Shanghai had become the center for this trade-union movement, which itself was vitalized by Communist leaders and agitators. By 1926 it was reported that some 320 unions existed in urban Shanghai.<sup>22</sup> The weapon of the strike was used frequently to gain demands. In 1927 there were 136 strikes, affecting 164,392 workers and resulting in the loss of nearly three million working days. In addition there were three general strikes involving over 160,000 workers and resulting in a loss of over two million working days. The first of these lasted from February 19 to February 28, 1927, and had as its purpose the ousting of Marshal Sun Chuan-fang from the Shanghai area. The second lasted for ten days, beginning March 21, and was called to facilitate the capture of the Chinese area of Shanghai by the Nationalist armies. The third and largest in point of numbers of workers engaging in it (111,800 stopped work) was declared at the insistence of the Shanghai General Labor Union in protest of the anti-Communist coup of April 12.<sup>23</sup>

<sup>21</sup> Tawney, *op. cit.*, pp. 151 ff.

<sup>22</sup> Shanghai Municipal Council, *Annual Report*, 1927. This figure is an estimate.

<sup>23</sup> Statistics on strikes taken from Shanghai Municipal Council, *Annual Reports*, 1926 to 1936, and from *Statistics of Shanghai*, section on "Shanghai Strikes and Lockouts," a special study.

This anti-Communist coup, employing terrorist methods, effectively broke the trade-union movement in Shanghai and elsewhere by depriving the organizations of their leaders. Scores of agitators, all of them alleged Communists, were jailed, and many of them were executed or disappeared. Since the foreign authorities have always co-operated in the suppression of communism those arrested in the foreign settlements by the foreign police were turned over to the Chinese authorities to be dealt with as they pleased. Deprived of their most effective leadership, many of the trade unions disintegrated and their remnants were forced to carry on underground activity.

By 1930, however, some of the unions had reorganized and had complied with the very strict provisions of the national government's Trade Union Act of 1928. Nearly 70,000 workers were reported members of unions in Shanghai in 1930.<sup>24</sup> Some of these unions interested themselves in political questions as well as problems of employer-employee relationships. For example, the Federation of Street Unions in the International Settlement during 1930-31 was actively concerned with the question of the status of the Settlement and the investigations of Judge Richard Feetham, making political demands and attempting to rally the Chinese in support of them.<sup>25</sup> In 1934 the General Labor Union, which was prominent during 1926-27, was reported to have resumed its activities

<sup>24</sup> For brief description of the Act, see Tawney, *op. cit.*, p. 152.

<sup>25</sup> Shanghai Municipal Council, *Annual Reports*, 1930-31. Copies of these demands were furnished by the Shanghai Chinese Ratepayers Association.

and to have asked the Nationalist government for formal recognition.<sup>26</sup>

Although labor unions were much less active after the Communist purge of 1927, strikes continued unabated. For the most part the questions in dispute pertained to conditions of labor, wages, and the right of collective bargaining. This activity since 1927 must be taken as an indication of a slowly growing group consciousness among Shanghai's workers.

For the most part the labor unions have included in their membership only industrial workers, and little attempt has been made to organize the far larger mass of other laborers. To date, then, the labor movement in Shanghai is only slowly expanding. Its leaders tend to espouse radical theories and courses of action and therefore are under constant fear of arrest as Communists. In addition, the practice adopted by some employers in Shanghai of using labor racketeers to settle strikes for a price is an additional danger to the labor leaders. The common method of breaking strikes is to insure the immediate disappearance of the leaders and agitators. Without leadership the strike fails.

Lack of adequate surveys and accurate information prevents the statement of definite conclusions concerning industrial and labor problems in Shanghai, and the question is one deserving of separate and more thorough treatment. The problem of factory inspection in the foreign areas depends on the workability of any agreement effected. The plight of the rickshaw puller has been slightly

<sup>26</sup> Shanghai Municipal Council, *Annual Report*, 1934, p. 29.

ameliorated. The future of organized labor depends to a large extent on the attitude of the municipal authorities and on the connection of Communists with the labor movement.

On the whole, there is observable a growing class consciousness in Shanghai and in other cities in China. This is the result of large-scale industrialization and Communist propaganda. It has been somewhat retarded in Shanghai because of the illiteracy of the workers, the violent suppression of labor groups, and the large supply of laborers. There is evidence that illiteracy is very slowly diminishing. Suppressive measures are now mostly confined to actions against Communists and Communist sympathizers. The supply of cheap labor, however, is increasing as the depression forces factories to close their doors. This means that an unemployment problem is slowly developing which may in time become severe.

The effects of the depression, which are just beginning to be felt in Shanghai, should draw attention to the problems of industry and labor, yet it is difficult to foresee the possibility of much alleviation of the conditions described. Unemployed or unpaid workers are the easy prey of agitators. With civil war always imminent, and with the continued encroachment of Japan in the north, foreigners who remember the anti-Japanese boycotts of 1919, 1924, and 1931-32 and their results may well wonder about Shanghai's future, for in the past there have been few times when labor troubles have not produced political repercussions.

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## CHAPTER X

### THE PROBLEM OF SETTLEMENT EXTENSION AND EXTRA-SETTLEMENT ROADS

**T**HE merchants who profited during the Taiping rebellion by constructing cheap houses for the Chinese refugees who thronged the foreign settlements could not have foreseen that they were assisting in the creation of one of the most difficult and vexing of Shanghai's problems. Once the Chinese were allowed to reside within the foreign areas they could not easily be turned out and the foreign authorities allowed them to stay. The popularity of these areas as a place of residence for Chinese grew as the port developed, and soon the foreigners found themselves almost forced out of their own settlements. They first attempted to solve this problem by demanding extensions of the foreign areas, some of which were granted, but which were insufficient for foreign needs. Growing Chinese antagonism to increases in the area of the settlements prevented further extension after 1915.

Concurrent with demands for extension was the development of municipally owned roads outside the boundaries of the foreign areas, where both foreigners and Chinese had established residences to escape the crowded conditions within the settlements. These roads, termed "outside roads" or "extra-Settlement" roads, were in Chinese territory and legally under Chinese jurisdiction, but both Chinese and foreign residents living on them came to

demand foreign police protection and foreign municipal services. This development of extra-Settlement roads was also resisted by the Chinese, although less successfully than extension. By common agreement no further construction of "outside" roads has taken place since 1925, but the problems of police protection and conflicting jurisdiction on these roads remain unsettled and constitute one of the greatest irritants in Sino-foreign relations. Historically the extension of the foreign areas and the development of extra-Settlement roads are inter-connected, but for purposes of clarity they will be treated separately.

#### SETTLEMENT EXTENSION, 1845-1896

The Land Regulations of 1854 were designed to include the areas delimited for the British and French prior to this date. Two agreements between the British and the local Chinese authorities had been made relative to the area under British control. The first agreement, negotiated by Captain Balfour on September 24, 1846, had given the British an area of roughly 830 mow or 138 acres.<sup>1</sup> An agreement between Rutherford Alcock and the Taotai, dated November 27, 1848, had extended this area to a total of 470 acres. The original French Concession, delimited by an agreement between the French Consul and the Taotai on April 6, 1849, gave the French some 164 acres. These limits were settled upon before the Taiping rebellion made the need for more space acute.

During most of the decade following the establishment of the 1854 regulations, the efforts of the British and American authorities were directed toward preserving the

<sup>1</sup> One mow equals one-sixth of an acre.

existence of the foreign areas and attempting to establish in fact an international area in spite of the objections of the French. Shortly before the formal establishment of the French Concession as a separate area, the French Consul secured for the Concession a small extension of twenty-three acres along the waterfront to the south, by an agreement of October 29, 1861. The following year, the fact of French non-adherence to the 1854 arrangements for an international area was made known, and despite all further efforts, which continued into the 'seventies, the French insisted on a separate Concession. The French extension of 1861 was due not to population pressure but to pressure exerted by the Compagnie Messageries Maritimes for wharfage space.

As has already been related in detail, during the decade after 1854 a settlement had grown up north and east of Soochow Creek known as the American Settlement, the boundaries of which were delimited by an agreement between the American Consul, George F. Seward, and the Taotai, on June 25, 1863. The same year this area of 1,309 acres was joined to the British area to form an international settlement (total, 1,779 acres). Here again, the object was not that of extension to take care of expanded population. Although this problem was part of the consideration which led to the amalgamation, the need for unity during the Taiping rebellion and the acceptance of the principle of no exclusive concessions by the British were important factors in the creation of the enlarged area brought under the new Land Regulations of 1869.

The crowded condition of the foreign settlements after the Taiping rebellion did not influence the Chinese in favor

of extension. Prior to this time the relatively small increases in the foreign areas were brought about by agreements between the local authorities, acquiesced in by the Chinese Imperial Government and the Diplomatic Body at Peking. After 1870, because of specific stipulations in the Land Regulations of the International Settlement and because of the importance of the foreign areas in Shanghai, extension became a diplomatic question and the subject of negotiation between the foreign representatives and the Imperial Government.<sup>2</sup> Such negotiations were bound to be intricate and to raise many difficulties. With respect to the International Settlement, the ratepayers, the Municipal Council, and the Consular Body were all interested parties and could not always agree on a common course of action. With respect to the French Concession, the problem was simplified. The French Consul virtually took his orders from the Minister and could overrule the desires of the residents of the Concession, since its Municipal Council was under his orders. In most cases the French acted independently of the authorities of the International Settlement, in both Shanghai and Peking. This lack of concerted action induced the Chinese to delay as much as possible and to play off one group against the other. When the question of extension became the subject for negotiation in Peking it was often used as a foil for the settlement of other problems or became a diplomatic bargaining point. It was under these difficulties that the foreigners demanded enlargement of their areas.

<sup>2</sup> A proposal was made in 1862 that a clause be included in the Land Regulations to provide for extension when necessary. It failed of adoption. See *North China Herald*, September 13, 1862.

During the 'eighties the Chinese population in areas adjoining the Settlement and the Concession had increased rapidly, and since modern sanitation and disease control among them was virtually unknown, this proved a constant menace to the health of the residents within the foreign areas. The increase in Chinese population was greatest on the north and the northeast of the International Settlement, in the districts known as Chapei and Paoshan, which bordered on Soochow Creek and Hongkew. In addition, many foreigners had located on the outside roads through these districts which were owned and policed by the foreign authorities.

#### EXTENSION NEGOTIATIONS, 1896-1899

By 1896 these problems had become acute and a new effort was made to gain Settlement extension along with revision of the Land Regulations. Negotiations were commenced by the Council of the International Settlement with the local Chinese authorities to this end, and a favorable response from the Chinese resulted in draft agreements which were sent to Peking for approval.<sup>3</sup>

There seemed little doubt that the agreement would be consummated when, in 1898, the French precipitated a crisis in the negotiations by attempting to gain an extension of their own Concession. Even the French demand might not have aroused a great deal of opposition among the Chinese had it not been for the so-called "affair" of the Ning-po Joss House. This involved a Chinese area, west of the French Concession, which contained a temple,

<sup>3</sup> *North China Herald*, April 17, 1896.

the Ning-po Joss House, headquarters of the Ning-po guild and a cemetery. Although part of this area was within the boundaries of the French Concession, the French had exerted their control over a much wider area, extending along the wall of the native city and farther west.<sup>4</sup> Twenty-four years previously, the French had attempted to build a road through the cemetery but had failed in the face of violent Chinese opposition.<sup>5</sup> The French now felt an imperative need for this road and proceeded with its construction. The Chinese refused to vacate, and when the French authorities began actual construction rioting broke out, French police stations were attacked, and some seventeen Chinese were killed. The French then demanded an extension of their settlement, in return for which they agreed to give up claims to the temple and cemetery.

At first there was only mild objection to the French demands on the part of the British, which Mr. Conger, the American Minister in Peking thought to be mainly political.<sup>6</sup> Meanwhile the officials of the International Settlement were pressing for an acceptance of their own demands for extensions.<sup>7</sup>

Again attempts were made both at Shanghai and Pe-

<sup>4</sup> Great Britain, *Accounts and Papers*, Vol. CIX, China No. 1 (1899), Reports of Acting Consul Brenan, No. 309, p. 212. Also, Maybon and Fredet, *op. cit.*, pp. 367 ff.

<sup>5</sup> Reports of Acting Consul Brenan, *op. cit.*

<sup>6</sup> *Foreign Relations of the United States*, 1899, Correspondence with China. Conger to Hay, No. 129, p. 143.

<sup>7</sup> Great Britain, *Accounts and Papers*, Vol. CIX, China No. 1 (1899), Report of a Special Meeting, Shanghai Chamber of Commerce, p. 227.

king to persuade the French to join in one large international area, but the French refused and they further aggravated the British and the Americans by contending that their grant was in the nature of an exclusive concession and that their exclusive control would apply to any extension. This contention was immediately opposed by the British and the Americans, since there were a number of property owners of these nationalities living in the area which the French desired.<sup>8</sup> Since the principal negotiations were being carried on with the Nanking Viceroy, the French dispatched a warship to Nanking to enforce their demands.<sup>9</sup> The British countered this move by sending two warships to Nanking and a note to the Chinese government stating that they would support China "materially" in resisting the French demands.<sup>10</sup> This action was in line with the British policy in opposing the extension of influence of any Power in the Yangtze Valley, which was regarded as a special British sphere of interest. After considerable delay, in which the British, Germans, and Americans stood in opposition to the French, who were supported by the Russians, the powers came to an amicable arrangement whereby they all agreed collectively to support joint demands for extension of both foreign areas in Shanghai and the French agreed to give up exclusive control over any extension they might gain.

As a result of this co-operative effort the extension of

<sup>8</sup> Great Britain, *Accounts and Papers*, Vol. CIX, China No. 1 (1899), Report of a Special Meeting, Shanghai Chamber of Commerce, p. 227.

<sup>9</sup> *Ibid.*, No. 451, pp. 340-41.

<sup>10</sup> *Ibid.*, No. 19.

the Settlement was approved in May 1899.<sup>11</sup> The following January an official proclamation was made of the extension of the French Concession. By these extensions, the International Settlement added 1,896 acres to the Hongkew area on the northeast and 1,908 acres directly west of the Settlement. The French extension was much smaller and added only 171 acres to the west of the Concession. Neither extension was entirely satisfactory. The French had built roads beyond their new boundaries to the west where many foreigners had begun to locate. The additional area given to the International Settlement did not include the important Paoshan district, nor did it include Chapei, and the problems of health control in the adjacent Chinese districts were not solved.

The British specifically reserved the right to negotiate further respecting Paoshan, but the Chinese felt that they had conceded a great deal and saw no reason for additional extension.

#### FURTHER NEGOTIATIONS, 1900–1917

The basis for any grants by the Chinese government is certainly not found in any specific provisions of the treaties

<sup>11</sup> In the negotiations of 1898–1899 the Chinese authorities contended that if an extension was granted to either the Concession or the Settlement both Japan and Germany might press for exclusive grants at Shanghai. The question was solved by negotiation in Peking, the areas desired by both countries being included in the extension to the International Settlement. Japan, however, still retains the right to request an exclusive concession in Shanghai. This right was granted in the Commercial Treaty signed with China on October 19, 1896 (text in Hertslet's *China Treaties*, Vol. I, 1896/7, p. 91, Protocol of October 19, 1896, Art. III, par. 2).

upon which the foreigners maintained most of their rights. The foreign arguments were, rather, that extension could be granted in the spirit of the treaties, that the unhealthful conditions in these areas were a constant menace to the residents of the foreign areas, and that such extension was necessary in order to control undesirable characters who congregated there to prey on the residents of the settlements yet could easily escape beyond the jurisdiction of the municipal police. The Chinese generally denied the right of foreigners to any extension. They argued that too much was expected of their own authorities in these districts and that, given time, foreign standards of health and law enforcement could be achieved.<sup>12</sup> The Taotai contended that the Settlement and Concession were for foreigners only and that as long as there was any vacant land inside, there was no need for extension. This was regarded by the foreigners as an attempt to evade the issue. The Taotai also attempted to show that the Paoshan district was not included in the Shanghai District Magistracy and therefore could not rightly be added to the limits of the treaty port. Against this argument was brought the fact that in the original extension draft of 1896 agreed to by the Taotai Paoshan had been included in the extension.

From 1900 until 1905, there was considerable discussion of extension, and in the latter year serious attempts were made to come to an agreement with the Chinese authorities on the inclusion of the Paoshan district within the Settlement boundaries. These attempts failed, although the Council continued to construct roads in this

<sup>12</sup> Shanghai Municipal Council, *Annual Report*, 1908, pp. 226 ff.

area, claiming this right had been granted in the agreements of 1899.<sup>18</sup> In June 1906 the Chinese government announced that a special municipality was to be created which would include Chapei and Paoshan. A Chinese Works Bureau had been organized for part of this area, but the foreigners were able to prevent the formation of any real Chinese municipal government which might interfere with their dubious rights in the areas concerned. For the next ten years the problem of settlement extension was continuously agitated, and intermittent negotiations were carried on by authorities of both Concession and Settlement to obtain the desired expansion.

In 1909 the Municipal Council of the Settlement presented a plan to the ratepayers, which they approved, for an extension of the northern boundary of the Settlement. The plan was forwarded to Peking, where it had the approval of some of the diplomatic representatives; but the Chinese presented a counter proposal for a scheme of Chinese participation in Settlement affairs as a *quid pro quo* of extension. It was also suggested that a system of joint administration be established for these outside areas desired by the Settlement authorities. The negotiations dragged on but were disturbed seriously by the Chinese revolution of 1911-12 which overthrew the old Manchu government and resulted in the setting up of a republic. The effect of the revolution, was to increase the demand for extension, but again the Chinese proposed some sort of Chinese representation in municipal affairs or at least a joint administration of these areas. The question of

<sup>18</sup> *Ibid.*

joint administration involved difficulties of taxation and jurisdiction which seemed at the time insurmountable, and there was general opposition to admitting the Chinese to any participation in the municipal government. This opposition came mainly from the British, who had the largest voice in Settlement management and whose Minister had considerable influence in Peking. A counter proposition for the creation of a Chinese advisory body in municipal matters in the Settlement did not satisfy Chinese demands, and though agitation continued in Shanghai the problem was not taken up again in Peking until 1914.<sup>14</sup>

In this year there appeared to be a notable change of attitude on the part of the Chinese. The old Manchu officials were gone and those who replaced them were more progressive and seemed willing to come to a definite adjustment of the problem. The French, unhampered by consular jealousies and ministerial friction, quickly came to terms with the new Republican officials and were granted an extension of their concession on July 31, 1914, to include a new area of 2,167 acres directly west of their old boundaries. In this new extension the French gave up their exclusive control over the renting of land, and foreigners were permitted to register their deeds through their own consulates.

This time, moreover, the French authorities co-operated with their colleagues in Shanghai and Peking and it seemed as if an extension for the International Settlement was assured. A draft agreement for extension was drawn up

<sup>14</sup> Shanghai Municipal Council, *Archives*, Correspondence Respecting Settlement Extension (unpublished).

in 1915 for inclusion of the Paoshan district and part of Chapei in the Settlement. A Chinese advisory board was to be established in lieu of direct Chinese representation. The plan had relatively few opponents in Shanghai and many Chinese supporters; but it did not receive the approval of the Chinese government or that of the Diplomatic Body in Peking. There seem to be several reasons for the failure of this scheme. The Chinese government raised a definite objection to the inclusion of that part of Chapei around the station of the Shanghai-Nanking railroad line, for it was felt that the area might be used by the foreigners to disrupt communications in time of trouble. Apparently the problem also became involved with the question of the Mixed Court in such a way that it was used as a trading point; that is, the Chinese would agree to Settlement extension if the foreigners would agree to a partial rendition of the Mixed Court with increased Chinese control.<sup>15</sup>

Although the Settlement authorities continued to hope for extensions, the entry of China into the World War on the side of the Allied Powers at length killed all opportunity of gaining further concessions from the Chinese government. The Allies could hardly persuade the Chinese to help them fight the Central Powers and also demand concessions from them. Thus, in spite of all efforts, the area added to the International Settlement in 1899 remained the last extension. Had the plan of 1915 gone through, since it included a large section where municipal roads had been constructed, the outside-roads question

<sup>15</sup> *Ibid.*

might have been partially solved. As it was, the large extension granted the French Concession soon resulted in a shift of Shanghai's residential population to the new French area and left Hongkew open for the industrial development and Japanese colonization which was to come after the war.

By 1917 the foreign authorities accepted the fact that further extension of either Settlement or Concession was practically impossible. The result of this was twofold. First, the French, in obtaining their large extension of 1915, now had control over the area within which they had previously constructed roads. This eliminated any "outside roads" question between themselves and the Chinese. Their colleagues north of the Yang-king-pang, however, having failed to obtain their extension, were still faced with the problems arising from the congested Chinese districts adjacent to the Settlement and the problems of building and maintaining roads in these districts to serve the ever growing demands of residents in these areas for police protection and municipal services. Second, in the negotiations of 1914-1917 the authorities of both Settlement and Concession offered to grant the Chinese a share in their municipal affairs in return for extension. The French had agreed to the appointment of two Chinese advisers in return for their extension. The Settlement authorities had offered to accept a Chinese advisory committee in return for Settlement extension. The Chinese saw this development as an entering wedge in the system of foreign rights and privileges and from this time continued to press vigorously for participation in the government of the International Settlement.

## EXTRA-SETTLEMENT ROADS

After 1914 the problem of extra-Settlement roads was of little concern to the French, who had none, and became of primary concern to the authorities of the International Settlement, who by January 1918 were maintaining 29.8 miles of roads outside the Settlement boundaries. To understand this problem, still a vital issue, it is necessary to trace briefly the origin of these roads and particularly the circumstances which led the Municipal Council into the business of owning and maintaining roads outside its actual jurisdiction.

The life of the early foreigners in Shanghai necessitated hard work for all but the richest merchants and was not blessed by many "amenities" which the Shanghailanders loves to talk about in ratepayers' meetings. For recreational purposes, however, the foreigners had constructed riding and driving roads adjacent to the Settlement and the Concession. These roads were restricted to shareholders of the group constructing them and to those who were willing to pay tolls for their use. Bubbling Well Road, for example, was constructed under this system. Most of these road projects failed to pay for themselves and there were early demands that the Municipal Council of the International Settlement take them over. This the Council agreed to do provided the roads in question were free of debt. Municipal control was not a simple matter, however, as the Chinese owners of property were still required to pay to the Chinese government the land tax on that portion of their property used as a road. Such being the case, these Chinese owners looked on the road

as their personal property and used it as such, frequently digging up the road and destroying bridges.

The situation in 1862, as reported to the Consular Body, was that certain roads were held under title deed and it was presumed that a fixed ground rent had been stipulated.<sup>16</sup> Other roads were held by the Council under arrangements with the Chinese authorities, and apparently no ground rent had been agreed upon. At this time the foreign authorities of both the International Settlement and the French Concession first began the practice of buying property outside the boundaries of their areas for roads and later for parks. On such property ground rent was paid to the Chinese government.

The legal basis for this activity of the foreign authorities is found, for the French Concession, in Article 9 of the *Rèlements* of 1866, which gives the Council of the Concession full powers to construct roads and highways, to provide for their maintenance, and also to provide for public services. This power was generally interpreted as not limited to the area of the Concession alone. As for the International Settlement, Article VI of the Land Regulations of 1869 provided, in part:

. . . . It shall also be lawful for the Land Renters, and others who may be entitled to vote as hereinafter mentioned, in public meeting assembled, to purchase land leading or being out of the Settlement, or to accept land from foreign or native owners, for the purpose of converting the same into roads or public gardens and places of recreation and public amusement, and it shall be lawful for the Council from time to time to apply such portion of

<sup>16</sup> Feetham Report, in *Report to the Shanghai Municipal Council* (1931), Vol. III, Part IV, p. 5.

the funds raised under Article IX of these Regulations, for the purchase, creation and maintenance of such roads, gardens, etc., as may be necessary and expedient. Provided that such roads and gardens shall be dedicated to the public use, and for the health, amusement and recreation of all persons residing within the Settlement.

Under this sanction, acquiesced in by the local Chinese authorities, the officials of both foreign areas continued to acquire land for the construction of roads. In many cases land was acquired by Consular title deed from foreign owners, but large amounts were acquired from Chinese owners, often by means of intricate negotiations.

It was not, however, the mere acquisition of roads outside the boundaries of the foreign areas which caused trouble but also the natural implications which ownership and maintenance of these roads carried with them. For the foreign authorities gradually assumed jurisdiction over the roads for police purposes and also began the extension of various municipal services to both Chinese and foreigners residing on them. As the Chinese began to resist more vigorously the demands for wide extension of the foreign areas, they saw in the development of the outside roads a situation which might easily be turned to the advantage of the foreigners and which might be a basis for extension of foreign jurisdiction if not actual extension of boundaries, and they consequently stiffened their resistance to further construction of these thoroughfares. The extension of the French Concession in 1915, as already related, included the whole area where the French authorities had constructed roads, and no roads were built outside the new boundaries by the French after 1915.

The extension of the International Settlement in 1899

included all but 4.3 miles of outside roads, and since there was hope for further extension the Council continued to follow its policy of road development in the districts adjacent to the Settlement. The demands for extension failing by 1917, the foreigners of the Settlement gave up hope of enlarging their boundaries but supported development of outside roads as the next best thing. The wave of anti-foreignism and the incident of May 30, 1925, served to strengthen the Chinese position, and further acquisition of property for extra-Settlement roads practically ceased after that date. At this time the Municipal Council controlled some forty-eight miles of roads outside the Settlement.

The construction of outside roads carried with it the problems of administrative control, policing, taxation, and the operation of municipal services. The origin of administrative control is vague and was apparently developed gradually and in a rather haphazard manner. Municipal Police were sent to patrol Bubbling Well Road in 1884, owing to local disturbances. When quiet had been restored the residents protested their withdrawal and agreed to contribute annually to their expenses. Such contributions were continued until 1899. Like developments took place on other roads and the demand for municipal services was met by the Council in the same way. With the gradual creation of a strong Chinese municipal authority in the area surrounding the Settlement, conflicts of control and questions of jurisdiction have produced a great deal of friction. The Chinese see no reason why they should not assert their sovereign rights over recognized Chinese territory. The foreigners find it hard to accept Chinese con-

tentions after many years of exercising rights which they have come to regard as perfectly valid.

The most important and most difficult aspect of the outside-roads problem is that of police jurisdiction and control. The origin of police control has already been set forth. The question of how far the police might exercise their control in making arrests early began to cause difficulties. A case in the Spanish Consular Court in 1905 was cited by Judge Feetham, which elicited a statement from the Consular Body that the Municipal Police could arrest foreigners on the outside roads just as they could within the Settlement, as in such cases they were acting as judicial agents of the Consuls. There seemed to be no great objection to this idea, for at this time the Chinese had not asserted their right to jurisdiction over foreigners in these areas. In this statement, however, the Consular Body also contended:

All police measures having for their object to insure peace and good order are valid in the International Settlement as well as on the roads constructed by the Municipal Council outside the Settlement, provided they are approved by the Consular Body.<sup>17</sup>

Aside from the obvious attempt to assert Consular authority, the mere statement of the extension of police control to the roads outside the Settlement by the Consuls certainly does not make such control valid. This statement was an obvious attempt to assert Consular authority, but such a statement could not legalize police control of these roads. In mixed cases on these roads, the jurisdiction of the police was apparently assumed without question until

<sup>17</sup> Feetham Report, *op. cit.*, Vol. III, p. 11.

1911 and offenders were arrested by the Municipal Police and brought before the Mixed Court, which took jurisdiction over them without any specific authorization to do so in the Mixed Court Rules. After 1911, when the Mixed Court came under the control of the foreigners, the Chinese objected to the assumption of jurisdiction over mixed cases originating in the outside-roads areas. Whether this objection was directed against administrative control of outside roads by the Council or at foreign control of the Mixed Court it is hard to say, since the two questions often become intermixed.

In 1919 the ratepayers of the Settlement passed By-law XXXVI, which fixed a penalty for the disobedience of any "reasonable regulation which shall have been authorized by the Municipal Council for the governance, control, direction or facilitation of traffic within such limits or on any municipal road or alleyway outside such limits. . . ."

The validity of the By-law was challenged in the British Consular Court, which contented itself with ruling that it was a reasonable or "good" By-law, but did not pass on the question of whether or not the Municipal authorities could be given this jurisdiction over the outside roads, which, the Court said was not a judicial question but a matter for diplomatic settlement.<sup>18</sup> There were apparently no strong objections from the Chinese authorities, and the By-law has continued to be enforced by the Municipal Police. Further, the introduction of Chinese Courts in the Settlement which have jurisdiction over all mixed cases has not altered the situation in its formal aspect. These

<sup>18</sup> Quoted in Feetham Report, Vol. III, Part VI, p. 13.

Courts have jurisdiction over all criminal cases occurring on the outside-road areas, where prosecutions are instituted by the Municipal Police.

As long as the Chinese police did not attempt to interfere with the duties of the Municipal Police on the outside roads there were relatively few controversies. In the 1920's, however, with a growing anti-foreignism, friction increased. With the formation of the Chinese Municipality in 1927 and the establishment of a Chinese police force for the areas surrounding the Settlement, conflicts between Chinese and foreign police became more frequent. In the absence of a written agreement defining their respective jurisdictions, the policing of the outside roads had to be worked out on a co-operative basis. It is a fact that the authorities of the Settlement, after the disastrous affair of May 30, 1925, made honest efforts to work in co-operation with the Chinese police authorities. These efforts naturally depended for success on the willingness of both sides to work in harmony in the interests of justice and efficiency and not in the interests of their political ideas.

Conditions have varied considerably since 1925. Not a year has passed, however, without some conflict or friction between the police of the foreign area and the police of the Chinese Municipality, giving rise to all the old questions of jurisdiction and police authority. The case of a bus accident on Connaught Road in the spring of 1934 is a good illustration. In this instance, the Chinese police refused to permit a bus to be moved from the prostrate body of a Chinese cyclist who had been run down, insisting on custody of him until photographs had been taken, even though the Settlement police were on the spot and an am-

balance was waiting. That the victim died for lack of attention did not affect the insistence of the Chinese in the matter. In recent years the police of the Chinese Municipality have increased their vigilance over foreigners who become involved in accidents in the outside-roads areas or who violate traffic rules. Cases have been numerous of foreigners who were detained, sometimes as long as twenty-four hours, without being allowed to communicate with friends or family.<sup>19</sup> All of this has been the result of a growing determination of the Chinese to assert their authority over areas which they regard as under their jurisdiction. Until some definitive settlement is reached, this friction between the police of the two areas will continue and will probably increase.

The levying of taxes and the extension of municipal services in the outside-roads areas have not involved so many complications nor produced as much trouble as has the problem of policing. After the extension of the International Settlement in 1899 the total of four and three-tenths miles of roads outside the Settlement was rapidly increased and many foreigners and Chinese built residences on them. This development caused the Council of the Settlement to observe in its annual report for 1903 that these residents were getting certain benefits without making any contribution to the municipal revenues. The Council attempted to remedy this by asking for subscriptions to support the police services, but, failing to obtain these subscriptions, decided not to carry on any extended public works in these areas.

New arrangements were made in 1905 by which the

<sup>19</sup> See *North China Herald*, April 14, 1934.

public service companies providing services for the areas outside the Settlement included a clause in their contracts requiring the individual receiving the service to pay a special tax. On this basis a special tax or rate was levied from 1906 to 1920 which was roughly one-half the general municipal rate within the Settlement. This tax was paid by all householders living on the outside roads who received municipal services. After 1920 the tax was raised to within two per cent of the general municipal rate and it has remained at that figure to the present time. The raising of the tax for residents on the outside roads occasioned many protests and at times refusals to pay. In such cases the Council induced the water and gas companies to shut off service, thereby forcing payment of the taxes.

As the various companies supplying services of one kind or another have passed from municipal ownership to private ownership, the problem of services on the outside-roads areas has become less complicated. The private companies, such as the Shanghai Power Company and the Shanghai Waterworks Company, have now made separate agreements with the Chinese Municipality by which residents outside the foreign areas are supplied with public services. With the passing of utilities into private ownership and the formation of subsidiary companies for the Chinese area the question of extension of public services to the residents on outside roads has largely been eliminated as a political problem.

With the Mixed Court abolished and a truly Chinese court established in its place, the problem of jurisdiction in cases originating on the outside roads has been greatly simplified. At present, the outside-roads problem resolves

itself into the question of conflicts of police authority. There is no line of demarcation between Chinese and foreign police jurisdiction on these roads. It has long been recognized that some definite agreement must be made if the problem is to be solved and the growing friction eliminated. The Chinese will not agree to complete foreign control and the foreigners will not agree to complete Chinese control. Therefore the logical solution would seem to lie in some system of joint administration pending rendition of the foreign areas.

#### THE FEETHAM PROPOSALS

This was the principle of the two plans presented by Justice Richard Feetham, who was brought out to Shanghai in 1930-31 to report on the status of the International Settlement. In Vol. III, Part VI, of his report to the Shanghai Municipal Council, which is concerned with outside roads, he proposed two plans, the first, Scheme A, to be a temporary plan, while the details of Scheme B, a permanent plan, are being worked out. The temporary Scheme A provided that the Shanghai Municipal Council be recognized as having authority over the outside roads and adjoining property and that the Chinese Municipality be recognized as having control of the areas in between those mentioned. The scheme also provided that this authority should be specifically delegated to the Council by the Chinese Municipality of Greater Shanghai and that in return the Council should contribute a part of the special rate to the expenses of the Chinese Municipality. This scheme, if effected, would have essentially perpetuated the status quo. The Municipal Council has always assumed authority

over the roads which it owned, while not disputing the right of control by the Chinese of all other roads and land outside the Settlement. The only change would be in the formal recognition of this state of affairs by the Chinese authorities and the contribution by the Council toward the expenses of the Chinese Municipality.

Scheme B, which was designed to be permanent pending complete rendition of the foreign areas to China, recommended the creation of a new authority in the outside-roads areas. This authority was to consist of a Committee or Council which should include: (1) nominees of the Mayor of Greater Shanghai; (2) nominees of the Shanghai Municipal Council; and (3) representatives of the foreign and Chinese residents and property owners in the areas concerned. Judge Feetham proposed that this authority be delegated the right by both the Chinese Municipality and the Council to make any necessary rules and regulations. This plan actually envisaged the establishment of a Sino-foreign government for these areas under a constitution or charter granted by the Nanking government.<sup>20</sup> Presumably the foreigners would still have a predominating voice in affairs. The police force of this new authority, according to Judge Feetham, was to be under a Chinese Commissioner but to include a foreign element, and the Council was to make specific contributions to its funds.

This scheme may be criticized on many grounds. Essentially, if carried out, it would mean the creation of a

<sup>20</sup> A somewhat similar proposal was made by the Chinese during negotiations for Settlement extension in 1899 and was again made in 1908. Shanghai Municipal Council, *Archives*, Correspondence Respecting Settlement Extension (unpublished).

new authority, only partially Chinese, which would in all probability raise as many new problems as it would solve. The Chinese authorities might well find it hard to agree to a scheme running counter to their ideas of Settlement rendition and the abolition of extraterritoriality. One might also question the necessity of establishing an elaborate scheme of government in an area admittedly under Chinese sovereignty, when it is expected that rendition will come eventually; and from the standpoint of efficiency it would seem that a prime requisite of any joint administration is simplicity of organization. In spite of these objections this plan fared better than the other proposals of Judge Feetham, since it has been made the basis for actual negotiation between the Chinese and foreign authorities.

The problem really resolved itself into the question of how best to provide for these areas an efficient police force which will be neither subject to political control nor prejudicial to foreign interests. Negotiations for the establishment of a joint police authority proceeded satisfactorily until the 1932 hostilities in Shanghai. Thereafter, as a result of their strengthened position, the Japanese community demanded a part in all negotiations. Specifically the Japanese look upon Hongkew as a Japanese area and the roads immediately outside this area, therefore, as within the sphere of Japanese interest. For these reasons, the Japanese demanded the appointment of Japanese police officers in whatever new force was created. This action has complicated the situation, since the Japanese demands have been opposed by both Chinese and foreigners.<sup>21</sup>

<sup>21</sup> Shanghai Municipal Council, *Annual Report*, 1935, Speech of the Chairman of the Council to the Annual Ratepayers Meeting, p. 7.

The problems of Settlement extension and extra-Settlement roads have occupied the attention of foreign and Chinese authorities almost since the opening of Shanghai to foreign trade. The history of these negotiations shows clearly the rise and decline of foreign prestige in China and the effect of a growing Chinese nationalism. In the nineteenth century the chief obstacles to the extension of the foreign settlements were the jealousies and rivalries of the foreign powers. The Chinese officials attempted to take advantage of this as they have always done and to prevent extension whenever possible. In the twentieth century there were added the obstacles of Chinese nationalism and distracting European problems. These factors aided the Chinese officials in preventing extension after 1915 and in preventing the additional construction of extra-Settlement roads following the World War. There is now no question of Settlement extension unless a wholly unlooked-for situation should arise. The remaining problem—control of the extra-Settlement roads—has become more localized in the past two or three years, a subject of negotiation between the authorities of the International Settlement and the Chinese Municipality. The chief obstacle at present to a solution seems to be Japanese insistence upon police control in territory adjacent to Hongkew. A dissolution of the deadlock therefore depends on the policy of Japan.

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## CHAPTER XI

### NATIONAL REPRESENTATION IN THE GOVERNMENTS OF THE FOREIGN AREAS

**I**N THEORY, both the International Settlement and the French Concession have as their governing bodies a municipal council representative of the property holders of the respective areas. In practice, as has been stated, the Municipal Council of the Settlement has been dominated by British nationals, while the Municipal Council of the French Concession has been under the authority of the French Consul-General. This situation has not gone without challenge by other national groups. In the history of the foreign areas both councils have included a minority of foreigners other than British or French, and after long years of struggle the foreigners were forced to grant minority representation to Chinese residents in the two areas.

The distribution of foreigners on the Council of the French Concession has never been a difficult problem, since the Council lacks any real power as a governing body. Foreign residents in the Concession have been quite apathetic, for the most part, on this point. Until recently the distribution of foreign nationals on the Council of International Settlement has always been adjusted amicably to suit the wishes of the dominant business groups. The representation of Chinese on these Councils, however, has long been a Sino-foreign problem and because of that fact will be discussed first.

In both Concession and Settlement, the majority of the residents are Chinese and in recent years their contributions to municipal funds have been greater than those of the foreigners. As in most questions which have involved relations between Chinese and foreigners in Shanghai, the French have been able to solve the problem with a minimum of trouble. This was because in the case of the French it was merely a question of bilateral negotiation and because the Chinese residents of the French Concession have been less articulate in their demands than those of the Settlement. On the other hand, the Council of the International Settlement in attempting to solve the problem of Chinese representation has had to deal with the conflicting interests of the ratepayers, the Consuls of the Treaty Powers, the diplomatic representatives of those powers in Peking, and the Chinese authorities. With so many interests and officials concerned, the difficulties for the Settlement authorities were multiplied tenfold.

#### CHINESE REPRESENTATION IN THE INTERNATIONAL SETTLEMENT

As soon as Chinese were admitted to the International Settlement as residents and as soon as the Settlement fathers decided to tax them, the question of their participation in Settlement affairs was raised. Although it did not become acute nor did the Chinese in the Settlement pay much attention to it until the first decade of the present century, the problem obtruded itself in Settlement affairs at various times before 1900. As early as November 1854, at a special meeting of landrenters of the Settlement, the Chairman of the Council in speaking on the fifth resolu-

tion of the meeting, which provided a vote for every assessment of \$50, is reported to have stated that justice required that Chinese paying a similar amount be entitled to the same privilege. He pointed out, however, that this would involve a change in their present system of government and could not be brought about until the next year.<sup>1</sup> Nothing further appears to have been said about this, but the proposal indicates a recognition of the fact that Chinese paying taxes should perhaps be accorded the privileges of participation in the Settlement administration.

Ten years later the issue was raised in definite form by the foreigners in a discussion of the drafts for the new Land Regulations which were to apply to the amalgamated British and American Settlements. There is no evidence on record of definite Chinese demands, and the discussion appears to have been initiated by the American Consul, Cunningham, or his colleagues. On April 16, 1863, Cunningham, writing to Anson Burlingame, the American Minister to China, that the foreigners in Shanghai were anxious to revise the 1854 Land Regulations, concluded: "We go no further until we learn whether the Ministers will support a municipal system founded on these principles."<sup>2</sup> One of the principles alluded to was "that there shall be a Chinese element in the Municipal System to which reference shall be made, and assent obtained to any measure affecting the Chinese residents, if the necessary concurrence can be obtained that all foreign quarters shall

<sup>1</sup> *North China Herald*, December 9, 1854.

<sup>2</sup> *Foreign Relations of the United States*, 1864, Part II, p. 857. See also discussion above, in chapter ii, p. 38.

be united under one Municipal system.”<sup>3</sup> It will be noted that the introduction of a “Chinese element” into the municipal system was conditional on the unification of all foreign settlements in Shanghai. The whole proposition seems to have originated with the Consular authorities and to have been espoused enthusiastically by the Ministers in Peking. These principles were accepted by the British, Russian, German, and American Ministers in Peking, although the Russian acceptance was conditional. Enthusiasm lessened considerably, however, when the French refused to amalgamate with the International Settlement and set up their own municipal organization in 1866.<sup>4</sup>

The question was not lost sight of. It was reported discussed in a meeting of the Treaty Consuls in Shanghai on July 12, 1866.<sup>5</sup> According to this report, the Consuls recognized the desire of the French to have a separate area and seemed resigned to this situation. The Consuls had before them the draft of the revised Land Regulations. The British Consul raised the question of developing some means whereby the Council might obtain the views of the Chinese in the Settlement on important questions and read a memorandum of Vice-Consul Alabaster on the subject. The Consuls agreed on the following regulation to be adopted as Article XXVIII of the revised code:

A Board of three Chinese delegates resident in the Settlement shall be formed for the purpose of advising and consulting with the Council on matters affecting the Chinese population as regards taxation, maintenance of order, etc., etc., in the following manner:

<sup>3</sup> *Ibid.*

<sup>4</sup> See discussion on this point above, in chapter ii, p. 29.

<sup>5</sup> *North China Herald*, July 21, 1866.

"The Senior Consul shall, during the month of March of each year officially request the Taotai to direct the Tung-sze (i.e. the representatives and headmen of the several native communities and guilds, chambers and clubs), to meet and elect three Chinese delegates aforesaid.

"Due notice and information shall be given to these delegates when such subjects are under discussion, but their functions shall be solely consultative. No new tax, no new measure of police or sanitary regulation affecting the native community shall take effect until the said Chinese delegates have been consulted thereon. They shall be invited to present written statements of their views which shall be entered on the minutes of the Council meetings and published."<sup>6</sup>

Even this mild form of consultation with official representatives of the Chinese community gained little support from the foreigners in Shanghai. There is no record of any attempt actually to incorporate this provision in the new regulations, which appeared in 1869 without reference to "the Chinese element in the municipal system." In fact, a suggestion that the Chinese be accorded some voice in the affairs of the Settlement, made at the ratepayers' meeting which discussed the revised regulations, was turned aside with the statement by a ratepayer that the foreigners would not like to see them as Councillors or as voters.<sup>7</sup> The only clue to the fate of this proposal is found in the report of another meeting of the foreign consuls on July 16, 1869.<sup>8</sup> The meeting was evidently called to consider some changes in the Land Regulations. The reported minutes state: "The recommendation of the Consuls in 1866 for

<sup>6</sup> *North China Herald*, July 21, 1866.

<sup>7</sup> *Ibid.*, March 7, 1866.

<sup>8</sup> *Ibid.*, July 24, 1869.

the representation of Chinese in or before the Council is not confirmed, it having been found that the representation of Chinese interests by their officers is sufficiently perfect for all practical purposes." The consuls of Great Britain, the United States, North Germany, and Italy were recorded as present at the meeting.

Thus it would seem that this early attempt to permit Chinese participation in Settlement affairs was blocked because the French would not agree to a single International Settlement, because the foreigners did not wish to admit the Chinese on a basis of equality, and finally because, in practice, the Council consulted with the leaders of the Chinese community before taking any action affecting their interests.

There is no record of any agitation then on the part of the Chinese, who had apparently not yet absorbed enough of the democratic ideas of the West to demand official participation in a government to which they made contributions. The motives of the foreigners were mixed. Some had visions of a much larger International Settlement, embracing the whole urban area of Shanghai with room for expansion, a sort of huge free port where Chinese and foreigners would live in peace and happiness to the profit of the foreigner. Others supported the idea as consistent with Anglo-Saxon principles of democracy. There were some, notably the British Minister, Sir Frederick W. Bruce, who objected to any increase of foreign privilege and would have liked the International Settlement reduced in area and the Chinese wholly excluded from residence in it.<sup>9</sup>

<sup>9</sup> *Foreign Relations of the United States*, 1863, Part II, p. 854.

Unsuccessful attempts were made to revise the Land Regulations in the 'eighties. In the drafts of this period there is no mention of Chinese representation, although some interest appears to have been taken in the subject.<sup>10</sup> The next definite move was made during the negotiations for extension of the International Settlement in 1898 and 1899. These negotiations were definitely related to the question of the extension of the French Concession and naturally involved considerable trading and compromising. When the British Consul began to talk extension of the International Settlement to the Shanghai Taotai, T'sai, the result was a statement by this Chinese official of the conditions on which he was willing to agree to extension. The first condition was :

After this extension of the Settlement, Chinese residents within its limits shall, in every respect, have the same rights and privileges as foreigners, and Chinese may duly vote for and be elected as Municipal Councillors.<sup>11</sup>

There is no indication that this demand was the result of a concerted move on the part of the Chinese to gain representation ; it seems rather to have been a trading point raised by the Taotai. The attitude of the foreigners is well set forth in the comment of the Acting British Consul on this demand :

If this regulation was accepted, the effect would be that the Municipal Council would be composed entirely of Chinese and

<sup>10</sup> Mr. W. W. Yen stated that his father engaged in a debate on the subject in the 'eighties (W. W. Yen, Letter to the Editor, *North China Herald*, May 12, 1931).

<sup>11</sup> Great Britain, *Accounts and Papers*, Vol. CV, China No. 1 (1900), Brenan to MacDonald, March 17, 1899, No. 44, p. 41.

that the existing foreign settlement would pass under Chinese rule. To all outward appearances, as you are aware, the cosmopolitan settlement here is British; seven of the nine Councillors are British; so are the police; and all the non-Chinese employees of the Council and English is the language used in all documents.<sup>12</sup>

The problem disappeared at this time because of the dismissal of Taotai T'sai and the appointment of a new official in his place who was willing to agree to extension of the Settlement without any embarrassing conditions attached.

Nevertheless, a careful reading of the events at the end of the last century in Shanghai indicates that the masses of Chinese in the Settlement were becoming more articulate and that this fact induced the leaders of the Chinese residents to take a more active interest in Settlement affairs. The period from 1895 to 1906 was marked by considerable trouble and several serious incidents including the Wheelbarrow riots in 1898 and the Mixed Courts riots in 1905. A feeling seemed to have developed that a greater degree of co-operation would be beneficial to both Chinese and foreigners. Indeed much might have been gained by official co-operation. The Council in making decisions affecting the Chinese residents would have easier access to Chinese opinion and could then hold that opinion responsible. The Chinese would have an official voice in Settlement affairs which would give greater publicity to their attitudes and grievances. Perhaps some of these considerations induced the outgoing Council in 1906 to make the suggestion that a Native Consultative Committee be formed by the Chinese to aid the Municipal Council in de-

<sup>12</sup> *Ibid.*

ciding matters affecting Chinese residents in the Settlement.<sup>13</sup>

The Council's suggestion was accepted as a serious attempt to gain Chinese participation. Committees of all the Chinese Guilds were formed into a Consultative Committee, which in turn elected an Executive Committee which was to co-operate with the Council.<sup>14</sup> This was a little more than that body looked for, however, and the foreigners regarded it as an attempt on the part of the Chinese to gain active and official participation in municipal affairs.

Owing to strong protests the Chinese changed the name of the committee to "The Representative Committee of Chinese Merchants," and set forth a detailed statement of their aims, as follows:

a) From time to time to make suggestions to the Municipal Council for the mutual benefit of the Chinese and foreign communities.

b) To keep the Council advised as to the opinions and feelings of the Chinese community in regard to questions affecting their special interests.

c) To be a recognized channel through which the reasonable complaints of the Chinese residents may be submitted to the Council, and more especially, in cases where difficulty may be experienced by those concerned in bringing such complaints directly to the notice of the Council.

d) To promote the general welfare of the Settlement by increasing confidence and goodwill between Chinese and foreigners, and in general to exercise the influence of local guilds in maintaining harmonious relations between all sections of the community by preventing misunderstandings forever.<sup>15</sup>

<sup>13</sup> *North China Herald*, February 23, 1906.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, March 2, 1906.

However laudable these aims, the foreigners were apparently afraid that the Chinese might attach more importance to this committee than was desirable. A substitute suggestion for the election of two Chinese to the Council in place of the Committee gained no support from the foreign community, and the sentiment of the foreigners was generally hostile to what seemed to them a partial rendition of their privileges. These fears seemed substantiated when an editorial appeared in a Chinese newspaper just prior to the annual ratepayers' meeting of 1906 which stated:

Of course, by accepting the present compromise of a Consultative Council, the Chinese by no means give up their right to claim representation in the governing body of Shanghai, and it is fully and clearly understood that when the proper time comes, the Chinese will ask to be accorded something that will do more good than a mere Consultative Committee.<sup>16</sup>

With this conflict of views it was not surprising that the ratepayers, with but few dissenting votes, passed the following resolution:

That the Ratepayers here assembled being of the opinion that the Council has not the power under the Land Regulations to recognize the Constitution of the Committee of Chinese called the "Representative Committee" decline to confirm the action of the Council with regard thereto.<sup>17</sup>

The Council had previously discussed this resolution and at first regarded its passage as an attempt to censure the Council, but upon being assured that no discussion of the

<sup>16</sup> *Ibid.*, March 16, 1906, translation.

<sup>17</sup> Shanghai Municipal Council, *Annual Report*, 1906. Minutes of Annual Ratepayers' Meeting.

powers of the Council under the Land Regulations or of the question of Chinese representation would be allowed at the meeting, the Council agreed to accept the resolution and after its passage informed the Chinese Committee that it could not be legally recognized.<sup>18</sup> In his report to the Shanghai Municipal Council Mr. Justice Feetham characterizes this abortive attempt to gain Chinese representation as follows:

It is impossible to resist the conclusion that, owing to the adverse attitude of the foreign ratepayers, a great opportunity was lost—an opportunity for taking such a step forward in the constitutional history of the Settlement as would, in process of time, have had a marked effect in establishing the relations between the Council and the foreign community on the one side, and the Chinese residents in the Settlement on the other, on a broader and sounder basis.<sup>19</sup>

The Chinese did not abandon their determination to gain an active and official participation in the Settlement government, but no concerted action was taken until 1914 and 1915.<sup>20</sup> In those years, negotiations were carried on by the French and the Settlement authorities for extensions of both the foreign areas. By now the foreigners had become resigned to the idea of an advisory committee in return for extension of the Settlement; but, unfortunately for the negotiations, the sentiment of the Chinese had progressed beyond the idea of an advisory committee to

<sup>18</sup> *Shanghai Municipal Gazette and North China Herald*, March 16, 1906, Minutes of Annual Ratepayers' Meeting and Council Meetings.

<sup>19</sup> Feetham Report, Vol. I, Part II, p. 123.

<sup>20</sup> A foreign plan for Settlement extension in 1909 had produced a Chinese counter proposal for representation.

that of direct representation. In the draft agreement for Settlement extension there appeared the following article:

The Chinese Government are of the opinion that in theory the Municipal Council should include several Chinese members to deal jointly with matters affecting Chinese in the whole Settlement, but recognizing that the existing Land Regulations preclude such inclusion, they accept in the meantime the Advisory Board provided in Article IV as a satisfactory substitute until Chinese representation on the Council may become feasible.<sup>21</sup>

The Advisory Board mentioned was to consist of "two nominees of the Ningpo Guild, two nominees of the Canton Guild, and one nominee of the Special Envoy for Foreign affairs or of the highest local Chinese authority in Shanghai."<sup>22</sup> These nominations were, however, to be subject to the approval of the Consular Body and the Board was to be purely advisory in character and could only act in unison. The draft agreement was sent to Peking, but there its acceptance by the Ministers and the Chinese government became involved in the question of the partial rendition of the Mixed Court and the whole plan fell through.<sup>23</sup>

During the next few years the Council attempted to bring about a greater degree of co-operation with the Chinese authorities but without conceding the right to official representation. In 1919 the Chinese "Amalgamated Association of Street Unions" was organized and immediately began a campaign of propaganda directed

<sup>21</sup> Shanghai Municipal Council, *Annual Report*, 1915, p. 105b.

<sup>22</sup> *Ibid.*

<sup>23</sup> Shanghai Municipal Council, *Archives*, Correspondence Respecting Settlement Extension.

toward a revision of the Land Regulations and official Chinese representation on the Council.<sup>24</sup> In July and August of that year, during some agitation over an increase in the municipal rate, the city was thoroughly circularized with posters and handbills bearing, under the inscription, "Revise the Yang-king-pang Regulations—Chinese Demand Representation on Municipal Council," a copy of the Land Regulations in force and of those proposed by the Chinese.<sup>25</sup>

Largely as an outcome of this agitation the whole question of Chinese representation was discussed in the press and came up before the annual ratepayers' meeting in the spring of 1920. The Council voted unanimously to reject any plan for direct representation but to approve a plan for an advisory body. The Council was opposed to Chinese members "on any consideration"—their usual reaction to specific demands which might endanger their authority. As a temporary measure the Chinese proposed the formation of an Advisory Committee and cited the attempts of 1906 and 1915 as precedents. The Chinese insisted, however, that this committee should be considered temporary and should be followed by a provision for direct representation. The ratepayers' meeting of that year defeated by a large majority a resolution which would have provided for three Chinese members on the Council and adopted a resolution for the creation of an Advisory Committee. In pursuance of this resolution an organization called the "Chinese Ratepayers' Association" was formed, which, among other activities, served as a nomi-

<sup>24</sup> Shanghai Municipal Council, *Annual Report*, 1919, p. 65a.

<sup>25</sup> *Ibid.*

nating body for the five Chinese members of the Advisory Committee.<sup>26</sup> This Committee was formally appointed in May 1921 and continued to function until 1925. Although the Council could report a "distinct advance in co-operation," this was more apparent than real and there is no evidence that the Committee assumed a place of very great importance in Settlement affairs. As a matter of fact, it seems to have been a mere "face-saving" device, which soothed the feelings of the Chinese and did not hurt the feelings of the foreigners.

On June 6, 1925, the Advisory Committee resigned in a body, giving as their reason, "absence of any desire on the part of the Council to punish offenders of the May 30th incident."<sup>27</sup> The incident had provoked a great deal of anti-foreign feeling and the foreigners became fearful of the future. Almost every organized body of Chinese in the Settlement made demands for Chinese representation on the Council along with demands relating to the incident itself. The result was a unanimous recommendation from the Council to the annual meeting of the ratepayers in 1926 for the immediate addition of three Chinese members to that body.<sup>28</sup> This action was authorized by the ratepayers, but on account of serious civil disturbances in China the acceptance of the Chinese government was delayed.<sup>29</sup>

<sup>26</sup> This organization is now called the International Settlement Chinese Ratepayers' Association.

<sup>27</sup> Shanghai Municipal Council, *Annual Report*, 1925, p. 67. See description of May 30 incident above, in chapter iii, p. 77.

<sup>28</sup> Shanghai Municipal Council, *Annual Report*, 1926, p. 60.

<sup>29</sup> *Ibid.*, p. 80.

With the rise of the Kuomintang in 1927 there was further delay pending the establishment of a new national government. To prepare for Chinese participation, however, the Council asked the Chinese Ratepayers' Association in 1927 to name seven of their number as an advisory committee to aid the Council in preparing the budget for 1928. This committee functioned until the annual meeting of that year.<sup>80</sup> At this meeting the Chairman announced that the necessary approval for Chinese representation had been obtained and that the three Chinese Councillors would take their seats at the first meeting of the newly elected Council; also that, in addition, six Chinese would be added as members to the more important Council committees.<sup>81</sup>

The Chinese were not satisfied with three members, and as a result of renewed agitation the ratepayers' meeting of 1930 had before it a resolution authorizing the Council to increase the number of Chinese members to five.<sup>82</sup> The resolution was voted down after a typical "die-hard" speech by a ratepayer. This action immediately called forth protests from the Chinese community. The adverse vote, however, was said to have been a rebuke by the ratepayers to the Council because it had not prepared them for action on the resolution beforehand. The Council was charged with having pledged in advance that the ratepayers would accept the resolution. The Chinese Rate-

<sup>80</sup> Shanghai Municipal Council, *Annual Report*, 1927, p. 80.

<sup>81</sup> *Shanghai Municipal Gazette*, Minutes of Annual Ratepayers' Meeting, April 19, 1928, p. 154.

<sup>82</sup> *North China Herald*, April 22, 1930; also Shanghai Municipal Council, *Annual Report*, 1931.

payers' Association apparently understood the situation and called upon the Chinese not to interpret it as a true expression of foreign attitude.<sup>33</sup> This view seemed to be warranted, for a few weeks later the same resolution was passed by an overwhelming majority at a special meeting. The presence of over twelve hundred ratepayers at this meeting, twice the usual number attending, indicated the significance of this action. Since 1930 the Chinese Ratepayers' Association has continued to demand annually an increase of Chinese members on the Council from the present five to nine and the admission of Chinese to the higher positions in the administration of the Settlement. To date there has been no indication of change in the Council membership in this respect, although Chinese have been admitted to some of the higher administrative positions.<sup>34</sup>

The admission of Chinese to official participation in the government of the Settlement marks a definite turning point in its history. From the moment when the first Chinese members took their seats on the Municipal Council, it became only a question of time, provided normal development continues, until the Settlement shall cease to be governed by the foreign minority and shall pass into the hands of the Chinese majority. Further, the admission of Chinese to participation in the Council and the Settlement administration has marked a new period of co-operation between Chinese and foreigners, limited of course by the

<sup>33</sup> *North China Herald*, April 29, 1930. Statement of Mr. Sun Fo and report of Special Meeting.

<sup>34</sup> See discussion above, in chapter iii, p. 70.

foreigners' desire to postpone Chinese control as long as possible and by the Chinese desire to increase Chinese participation as quickly as possible.

#### CHINESE REPRESENTATION IN THE FRENCH CONCESSION

Since the French Concession has been under the sole control of the French Consul-General subject to the higher French authorities, less difficulty was experienced there in adding Chinese to the membership of the Conseil Municipale of the French Concession. The *Règlements d'organisation* of 1868 provided in Article 5:

One or more Chinese of good repute or chiefs of guilds named by the Consul General in concert with the Taotai may, if the Council deems proper, be admitted to its meetings with a voice in its deliberations but without a vote.

It was apparently not "deemed proper" to invite Chinese of "good repute" to sit with the Council in the French Concession until 1914, when Chinese representation on the Council was made a condition of extension of the Concession. This bargain provided for two Chinese to act in an advisory capacity with the Consul-General and the Council. In 1927 the *Règlements* were revised to provide for three Chinese members on the Council, and this number has been raised to five on the Provisional Commission which since 1927 has functioned in place of the Council.

The Chinese members are chosen by the Consul-General on nomination of the Chinese Ratepayers' Association of the French Concession. Because of the different nature of the government of the French Concession there has been

far less agitation respecting Chinese participation in the affairs of the Concession. The practice, early adopted by both Concession and Settlement leaders, of frequent consultation with leading Chinese of their respective areas on matters affecting the Chinese communities, has in the case of the French Concession served to eliminate friction and more or less to satisfy the Chinese inhabitants.

The problem of Chinese representation, therefore, in the history of the International Settlement and to a lesser degree in the history of the French Concession has been one of considerable importance, adding to the many complicated problems of Sino-foreign relations. With the partial granting of Chinese demands, the question is less acute now than it was. In the last few years it has become linked with the newer problem of the distribution of foreign nationalities on the Council of the International Settlement. This newer problem must now be considered.

#### FOREIGN REPRESENTATION ON THE MUNICIPAL COUNCIL OF THE INTERNATIONAL SETTLEMENT

For a greater part of the history of the International Settlement the British have had the dominant position in trade, finance, and investments. As a result, in a municipal organization in which the governing body was composed primarily of merchants, the majority of the Council's members have been British. The Municipal Council of 1854 was composed of seven members, five of whom were British and two of whom were American, the latter representing the nation with the second greatest interests in Shanghai. After the adoption of the Land Regulations of

1869, the Council was increased to nine, with the British holding seven seats and the Americans two.

With the growth of the port in the ensuing years other nations began to develop their commerce, and the composition of the Council usually reflected the interests of the secondary trading nations. In 1899, for example, the Council was composed of seven British nationals, one American, and one German. Gradually the British were forced to give up their large majority and content themselves with a bare majority of five.<sup>85</sup> For a considerable period, in fact until 1927, the composition of the Council varied with five or six British, one or two Americans, and one Japanese or one German or one Austrian. In 1927 the Japanese elected two members, the Americans two members, and the British five. Since that date, with one exception when the Americans lost a seat to the British, the foreign membership of the Council has been maintained in a five-two-two ratio. There seems to have been no disposition on the part of the American community to work for the election of more than two of their citizens as members of the Council. The Japanese in contrast to the Americans have taken a more active interest not only in the composition of the Council but in the whole government of the Settlement.

In this connection it is interesting to note a forecast of Japanese influence as early as 1919. In the quarterly report of the American Legation in China for the quarter ending December 31, 1919, is found the following statement

<sup>85</sup> There were seven British members until 1914. A Japanese member was first elected in 1916.

which pertains to the question of Chinese representation on the Municipal Council:

It is probable that a compromise under which the Chinese would be entitled to elect a fixed number of Chinese councillors would satisfy them. Some such arrangement seems desirable not only as a means of satisfying the just aspirations of the Chinese residents but also in view of the growing danger of Japanese control of the Settlement. The Japanese population has shown an amazing growth of recent years, and while the Land Regulations are so framed as to give property owners a disproportionately great share in the local government, the increase in the Japanese colony has not been without a considerable increase in Japanese property, so that the fear of Japanese domination is not without solid foundation. So long as the Japanese continue to pursue the policy of the past few years, there are few foreigners in China who would not prefer a mixed Chinese and foreign administration to a purely foreign control dominated by Japanese.<sup>36</sup>

Prior to the 1935 election the Japanese expressed a desire for additional representation on the Council but did not press the matter, and as in the past nominated only two candidates. In 1936, some weeks prior to the date set for the annual nominations for the Council, agitation for increased Japanese representation was renewed and was followed by the nomination of three candidates in place of the two normally accorded Japanese. This aggressive action met with strong foreign opposition. Both British and American residents' associations urged non-Japanese foreign voters to vote only for the five British and the two American candidates. Since qualified voters may vote for any number of candidates, from one through nine, and the nine candidates having the highest number of votes are

<sup>36</sup> *Foreign Relations of the United States*, 1919, Vol. I, p. 410.

declared elected, this scheme would effectively prevent more than two Japanese candidates from being elected. This was what happened.<sup>87</sup> The first election returns showed that practically all of the non-Japanese votes were cast for the British and American candidates, and that the Japanese candidates received under nine hundred votes each, which number is approximately the normal Japanese voting strength.<sup>88</sup> Through some error 323 votes, mostly Japanese, had not been counted. The Municipal Council declared that the uncounted ballots would make no difference in the election results, but after a storm of protest from Japanese residents the Consular Body declared the election invalid and called for a new election to be held on April 20 and 21, 1936.<sup>89</sup>

Although there was considerable speculation as to the

<sup>87</sup> *North China Herald*, August 21, September 4, 18, 1935, and January 22, 1936.

<sup>88</sup> *North China Herald*, April 25, 1926. The returns, including the 323 votes not counted, were as follows: Brig. Gen. E. B. Macnaghten, British, 2,012 votes; W. J. Keswick, British, 1,988; G. E. Mitchell, British, 1,988; H. Porter, British, 1,949; A. D. Calhoun, American, 1,902; C. S. Franklin, American, 1,896; H. E. Arnhold, British, 1,893; T. Go, Japanese, 880; T. Yamamoto, Japanese, 875; T. Urabe, Japanese, 874. Mr. T. Go was not nominated by the Japanese for the second election. In 1935 the 3,850 registered voters were divided as follows: British, 1,284; Japanese, 893; American, 400; the remainder divided among other nationalities. Voters must sign their ballots.

<sup>89</sup> The Municipal Council designated Mr. J. W. Carney, Mr. V. St. J. Killery, and Mr. T. Yamamoto, of American, British, and Japanese nationality, respectively, as an election committee to investigate the mistake in the original count of the ballots. As a result of the election committee's investigation, the Municipal Council published a letter censuring the Secretary of the Council and the Deputy Treasurer (Revenue) for negligence in counting the ballots.

outcome of a second election, the Japanese, apparently, did not wish to press the issue and this time nominated only two candidates. Since the total number of candidates now nominated was nine, in accordance with the Land Regulations they were declared elected without further balloting. Such Japanese agitation for increased representation on the Municipal Council of the International Settlement is significant for the future of Shanghai, indicating, as it does, more united effort by the Japanese toward dominance of the International Settlement. It also constitutes a challenge to British supremacy in Shanghai and therefore involves the future status of the foreign settlements.

One element in the problem of national representation in the governments of the foreign settlements has remained constant. The members of the Councils of the International Settlement and French Concession, regardless of nationality, have always been representative of foreign commercial and financial interests as a whole as well as of the particular business interests of their countrymen. This has resulted in an identity of interests and a continuity of policy. Neither Chinese nor Japanese representation has affected this identity of interests, for both Chinese and Japanese councillors have been as representative of commerce and finance as have their other colleagues. For the most part this common interest of the councillors has served the Settlement and the Concession well. It has made possible a type of international co-operation, it has lessened national rivalries, and it has helped to provide that safety and public order so necessary to the promotion of business enterprise.

Today two national groups are striving to gain greater representation in the governments of the foreign settlements: the Chinese in the International Settlement and the French Concession, and the Japanese in the International Settlement. Neither group is yet fully satisfied. Yet neither the Chinese nor the Japanese would care to see the other attaining its ambition. Since the Chinese have the strength of numbers and the Japanese have the force of arms, a peaceful solution of the question of national representation is a vital prerequisite to the settlement of the Shanghai problem.

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## CHAPTER XII

### SHANGHAI'S TRADITIONAL NEUTRALITY

**F**OR OVER a century the foreign powers in dealing with China have followed a policy of protecting the lives and property of their citizens resident in that country. The right to provide such protection is recognized in international law. Its exercise with respect to the foreign settlements in Shanghai, however, has given rise to strange problems and peculiar situations. The concentration of foreign interests in this city made the question of protection important from the beginning. As has already been pointed out, the legal position of the foreign settlements is far from clear, so that the question of protection has always been a matter of policy rather than one of clearly defined legal right. "Necessity" has been the law upon which the policy of protection has been based. As such it has involved the defense of the foreign settlements in Shanghai by force, the exclusion of all armed Chinese forces from these areas, and the maintenance of neutrality in both civil wars and international wars involving China.

#### NEUTRALITY IN CHINESE CIVIL WARS

According to the treaties of 1842-44 the Chinese government was responsible for the protection of foreigners, but in the several decades following it was clear that this government was hardly able to protect its own citizens, let

alone citizens of other countries. Furthermore, this treaty obligation had been assumed prior to the establishment of exclusive foreign areas in the treaty ports over which the Chinese government could not exercise jurisdiction. The foreign merchants in Shanghai soon recognized that their safety depended upon their own efforts. They therefore invoked the doctrine that every community has the right to take any steps necessary for its own protection regardless of a specific legal grant to that effect.

The development of this doctrine at Shanghai grew out of a special situation soon after the port was opened. The Taiping rebellion swept toward the Yangtze Valley in 1851 and 1852 and caused the merchants in Shanghai to send urgent appeals to the commanders of the naval forces in that port for protection. This was a time when foreign relations with China were in the early stages of development and there were no precedents to guide the actions of foreign officials, who, desiring to abide by the treaties, were not at all sure what steps they could legally take. The Shanghai merchants sent notes to their consular, diplomatic, and naval representatives who were there at the time, requesting the presence of warships and guards. As the rebel forces approached Shanghai these pleas became more insistent, causing unintentional embarrassment to some of the diplomatic representatives, who could not order the naval commanders about. The case of the American representative is typical. In 1853 Commissioner Marshall wrote from Shanghai:

If the naval force of the United States in these seas is of any use at all, such events as I now narrate should awaken it from the repose it enjoys in the harbor of Victoria, and send its flag,

as the emblem of national power, where American citizens will probably require and need its protection.<sup>1</sup>

A few months later when the situation had grown more serious, and after receiving additional requests from American merchants in Shanghai for protection, Marshall wrote:

It cannot be denied that the American citizens in China have good cause for complaint. Their residences have been built; their capital invested on the faith that they would not escape the attention and protecting care of their own government. They find themselves within the vortex of a revolution without even the means of escape, and when they reach the sea they find it also abandoned by their country's flag.<sup>2</sup>

While Marshall was complaining to the Secretary of State, the merchants had not been idle but were taking measures for their own protection. In various public meetings held in April 1853, it was decided to form a volunteer defense force and to appoint a committee to co-operate with the civil and military authorities of the powers then resident in Shanghai for the defense of the settlements. The situation became acute in September of that year, when the rebels captured the native city and there seemed some likelihood that the foreign areas would become a battleground for the rebels and the Imperial troops, who were encamped just outside the so-called British area.<sup>3</sup> At

<sup>1</sup> *United States House Executive Documents*, 1853-54, Vol. 16, No. 123, Correspondence of Commissioner Humphrey Marshall, pp. 26 ff.

<sup>2</sup> *Ibid.*

<sup>3</sup> This affair has been described above, in chapter ii, p. 32. See also, Great Britain, *Accounts and Papers*, 1854, Vol. LXXII, Correspondence Respecting the Attack on the Foreign Settlements at Shanghai; and Montalto de Jesus, *op. cit.*, p. 58.

a public meeting it was decided to adopt a policy of armed neutrality and to prevent any infringement of the foreign areas by either rebels or Chinese Imperial troops. To this end there occurred the famous Battle of Muddy Flat. This action was taken by an international volunteer force of some three hundred men, British, French, and American, including some naval contingents, which was able to force the Imperial troops to withdraw some distance from the foreign areas. The policy of neutrality was further strengthened by proclamations by the British, French, and American consuls and was upheld by the diplomats. Marshall declared that he was simply following the traditional American policy of neutrality.<sup>4</sup>

The pronouncement of a neutral policy is one thing, however, and its enforcement is another. Through the aid of the naval forces of the powers and the hastily organized volunteer force the foreign community had been able to protect itself and, so to speak, maintain its territorial integrity. The maintenance of a neutral attitude on the part of the merchants and even of the diplomats proved more difficult than writing a proclamation. In sentiment, the community was divided, some favoring the Taipings and some partisan to the Chinese Imperial Government. Under Imperialist protests, some foreigners smuggled arms, ammunition, and food to the rebel camp in the native city, while dissension arose between the French authorities and the officials north of the Yang-king-pang as to who was maintaining neutrality and who was entitled to protection. Aside from these disputes the main purpose of the policy

<sup>4</sup> Marshall Correspondence, *op. cit.*, p. 209.

was achieved, namely the protection of foreign property and foreign lives within the foreign areas.

In the course of time this policy of neutrality was resorted to on many occasions and the methods became more fixed as the policy expanded. In 1860–1862, when the Taipings again threatened Shanghai, the same protective measures were taken. In 1900, the Boxer uprising in the north had its repercussions in the Yangtze Valley and foreign forces were again employed for the protection of the settlements. When it became apparent in 1911 that the revolutionary forces would capture the Chinese city of Shanghai, action was immediately taken by the municipal authorities of the two areas to secure the protection of the foreign powers. The Taotai suggested the establishment of a neutral zone of thirty miles radius around Shanghai. The Consuls refused to sanction such a procedure but insisted on the traditional neutrality of the two areas. Armed forces were landed by the various foreign powers to augment the municipal police and volunteers. Other forces were held in readiness at Hong Kong, but aside from some disturbance when the revolutionaries captured the native arsenal the safety of the foreign settlements was easily maintained.

The situation in 1911 presents an interesting parallel to the Taiping rebellion.<sup>5</sup> In 1853, the foreigners had rescued the Taotai and given him protection in the Settlement, but his authority was not maintained and as a result the foreigners thought it necessary to establish the foreign-

<sup>5</sup> Great Britain, *Accounts and Papers*, Vol. CXXI, China Nos. 1 and 2 (1912); and *Foreign Relations of the United States*, 1912, China, pp. 161 ff.

administered Customs Service. In 1911, the Taotai was again given protection in the Settlement but not allowed to exert his authority, and with the downfall of the Manchus he lost office. Again the opportunity was used by the foreigners to take over the Mixed Courts of the French Concession and the International Settlement and turn them into foreign-controlled institutions.<sup>6</sup>

From 1920 until 1928, China was almost continually in the throes of civil conflict, and measures for the protection of the foreign settlements were frequently necessary. During these years the policy of the municipal authorities of the Concession and the Settlement gradually expanded to include not only the maintenance of neutrality within the settlements and protection from armed forces operating in Chinese territory but also a restriction on the free passage of persons through the foreign areas, control of traffic in arms, and the denial of the right of asylum to any whom the municipal authorities felt might be the cause of internal disturbance. The attempt to control traffic in arms was apparently successful in the International Settlement with respect to large consignments, but there was naturally greater difficulty in controlling small shipments. With respect to the French Concession, however, it was commonly understood and alleged that the authorities did not exercise rigid control and that large shipments of arms passed through the Concession. Passage of Chinese troops through the foreign areas in any number was prohibited and, in time of particular danger, any troops allowed to come into the Settlement were disarmed, interned, and

<sup>6</sup> See discussion above, in chapter vi, p. 154.

later deported. While the authorities in the Settlement made no particular objection to allowing refugees to come inside the boundaries, since it was difficult to prevent such ingress, they did deny asylum to undesirable characters. This applied to criminals and also to political leaders or war lords, the most notable case being the denial of asylum to Hsü Shu-cheng, the Chinese war lord known as "Little Hsü." The authorities of the French Concession have always been more lenient in this respect, and many political refugees have maintained homes in that area.<sup>7</sup>

The protection granted Shanghai in 1927 differed considerably from that granted in 1854, just as the city itself differed from its earlier counterpart. The diplomats and the naval and military officials possessed means of quick communication with their headquarters, and co-operation was much easier. Yet the 1927 situation was in many respects similar to those of the years 1853–1854, 1860–1862, and 1911–1912. There was the additional aspect, however, of the presence of communism among the forces seeking control of China, which led the interested powers to take added precautions. The fear of the possible occupation of Shanghai by anti-foreign forces and the consequent loss of millions of dollars' worth of property and of many lives led to the establishment of a virtual army of occupation for Shanghai. Great Britain organized the "Shanghai Defense Force," which numbered close to 20,000 troops, and this force was supplemented by large contingents of French, American, and Japanese.<sup>8</sup> Shanghai was host to

<sup>7</sup> Shanghai Municipal Council, *Annual Reports*, 1920, p. 85a; 1921, p. 70a; 1922, p. 79a; 1924, pp. 96–97.

<sup>8</sup> *Ibid.*, 1927, pp. 51, 64, 71.

a truly "international" army in the spring of 1927. British regulars, Scotch Highlanders, and Punjabis from India rubbed elbows with Annamite troops from Indo-China, Japanese regulars, crack Italian and Belgian regiments, and American Marines, in addition to the cosmopolitan Shanghai Volunteer Corps. In the Whangpoo River at various times were anchored one hundred and twenty-five warships flying the flags of Great Britain, the United States, France, Japan, Italy, the Netherlands, Spain, and Portugal. With such a formidable force at hand, the foreign areas were safe from any "nationalists" or "communists" and the worst fears of the "old China hands" failed to materialize.

From 1853 to 1932 the keynote of the neutrality policy of the foreign settlements was the protection of foreign lives and property from warring Chinese armies. Armed force was used when necessary to prevent Chinese armies from threatening the foreign areas. Force has thus kept valid a policy which has had no legal basis.

#### NEUTRALITY IN INTERNATIONAL CONFLICTS

Shanghai's tradition of neutrality has meant, in addition to the protection of the foreign settlements from Chinese civil conflict, the recognition of the neutrality of Shanghai in international conflict. This first occurred during the Franco-Chinese war over Tonkin in 1884-1885, when the port of Shanghai was recognized as lying without the area of possible hostilities, in other words as a neutral zone.<sup>9</sup>

The neutrality of Shanghai was again declared in the

<sup>9</sup> Shanghai Municipal Council, *Annual Reports*, 1884-85.

Sino-Japanese war of 1894–1895 and the Russo-Japanese war of 1904–1905.<sup>10</sup> The outbreak of the World War, however, produced a different and more complicated situation than did the previous conflicts. The Chinese government declared its neutrality at the beginning of the war, but the issue was soon raised as to the status of leased territories, national concessions, and settlements in the various treaty ports. The leased territories were not considered neutral if belonging to belligerents but a proposal was made in Peking (in November 1914) to neutralize all settlements and national concessions in the treaty ports.<sup>11</sup> The United States appeared willing to approve such a step and Mr. Reinsch, the American Minister to China, was informed by the State Department that

The International Settlements, however, in the open ports of China are regarded as belonging to an entirely different category [i.e., from leased territories]. These settlements, with their cosmopolitan population, the Department believes, should by general consent be excluded from the field of military operations.<sup>12</sup>

Although no general agreement was concluded, most of the settlements and concessions were considered neutral until China entered the war on the side of the Allied Powers in 1917.

In the International Settlement the authorities attempted to maintain a strictly neutral attitude. The Municipal

<sup>10</sup> The declaration of neutrality came from the municipal authorities supported by the Treaty Powers. See Shanghai Municipal Council, *Annual Reports*, 1894 and 1904.

<sup>11</sup> *Foreign Relations of the United States, 1914, Supplement*. Correspondence Relating to China, pp. 161–63.

<sup>12</sup> *Ibid.*, p. 189.

Council closed the Town Hall to patriotic gatherings and generally prohibited demonstrations by any national group.<sup>13</sup> It is interesting to note that German and Austro-Hungarian companies of the Shanghai Volunteer Corps continued to drill along with the English companies until 1917.<sup>14</sup> When China declared war on Germany, however, the usual war measures were taken against German property and the usual war psychology prevailed. All semblance of neutrality in the International Settlement then disappeared.

#### METHODS OF MAINTAINING NEUTRALITY

Having presented specific examples in which the policy of neutrality and settlement protection was effective before 1932, we now consider the methods used in giving effect to this policy. As has been stated, the foreign settlements in Shanghai have been protected by foreign forces, Chinese armed forces have been excluded from the settlements, and steps have been taken to prevent disturbances within the settlements.

The residents of Shanghai have always been able to raise armed forces for their defense and, since the use of these forces has been important in the past, their composition may be briefly described. Most unique is the Shanghai Volunteer Corps, which has had a long history as the only municipal army of its kind in the modern world. It was originally organized in 1853 at the beginning of the Taiping rebellion, with a Captain Tronson of the Second

<sup>13</sup> Shanghai Municipal Council, *Annual Report*, 1915, p. 46a.

<sup>14</sup> *Ibid.*, Report of the Commandant of the Shanghai Volunteer Corps.

Bengal Fusileers as the commanding officer.<sup>15</sup> Drills were held daily, and soon gave the little settlement the aspect of an armed camp. The formation of the Corps had the full sanction of the British, American, and French naval and consular officials at the port. If we are to believe contemporary accounts, the Corps conducted itself gallantly in the famous Battle of Muddy Flat already described.

Between 1860 and 1870 Shanghai was amply protected by foreign troops and the necessity for a local corps was not so great. During the last half of this decade interest waned and the Corps practically ceased to exist. In 1870 the control of the Corps was handed over to the Municipal Council, "who shall, through their chairman decide upon all questions of organization and shall generally control the actions of the Corps."<sup>16</sup> The Corps then became a municipal institution maintained from municipal funds, and it has been developed into a small, highly compact and efficient little army used for the sole purpose of defending the Settlement and assisting the police in maintaining law and order within its borders. It has seen active service on many occasions and has been under fire at various times. It is organized on a purely volunteer basis but with some paid personnel to maintain its equipment. It is a truly international army, consisting of British, American, Japanese, Chinese, Portuguese, Filipino, and Russian companies. As a partial measure of repatriation, a paid Russian detachment is maintained in addition to a volunteer Russian company. The Corps possesses armored cars and light artillery as well as the usual arms and ammunition.

<sup>15</sup> Lanning and Couling, *op. cit.*, p. 305.

<sup>16</sup> Hawks Pott, *op. cit.*, p. 77.

Its strength in 1935, including officers and men, was between 1,950 and 2,100. A mobilization plan has been carefully worked out, and practice mobilizations are carried on at intervals. The future of this force is at present somewhat uncertain, as difficulties in recruiting the volunteers and lack of necessary appropriations for equipment may impair its efficiency.<sup>17</sup>

As a matter of fact the Volunteer Corps has not been sufficient to defend adequately the International Settlement, and in any serious disturbance the armed forces of the Treaty Powers have always been called in to assist the local force. It has been the practice to let the French defend their Concession with French troops, with the assistance of other foreign troops if necessary. To defend the International Settlement, British, American, and Japanese forces in considerable numbers have often been used. Because of the unsettled conditions following the World War, the French, British, American, and Japanese governments have stationed regiments in Shanghai on a more or less permanent basis. The strength of each of these national forces in normal times has varied from one thousand to two thousand men.<sup>18</sup> The French and the Japanese

<sup>17</sup> Japanese residents of the Settlement in 1936 demanded abolition of the Volunteer Corps as an unnecessary expense as long as foreign troops were stationed in the Settlement.

<sup>18</sup> A report of the American Military Attaché in Peking indicates the number of foreign troops stationed in Shanghai as of February 1, 1933, as follows: British, 2,160; French, 1,982; Japanese, 1,934; American, 1,758; Italian, 108; total, 7,942. United States Department of State, *Memorandum of the Solicitor* (Washington, 1934), third revised edition, "Right to Protect Citizens in Foreign Countries by Landing Forces." It was reported that the Japanese residents of Shanghai had requested 3,000 more troops in the spring of 1936.

have built permanent barracks to house their troops, while the British and American forces are housed in temporary quarters. In addition to these troops there are the naval units of the various powers of which there are always several available in Chinese waters and from which sailors and marines may be landed to augment the land forces.

The propriety of using large foreign contingents to defend the settlements at Shanghai has not often been questioned. The sending of the British "Shanghai Defense Force" to defend the settlements in 1927 resulted in questions in the House of Commons as to the expense involved and the value of the expedition in proportion to property and lives protected. This gave Shanghai residents a scare, but the action of the powers in 1932 indicated no change in the policy of Settlement protection even though it seriously altered the policy of neutrality. British, Americans, and French sent additional naval and military forces to Shanghai on the outbreak of hostilities between the Chinese and Japanese in 1932, and it is probable that Shanghai will be protected in the immediate future should trouble of any kind endanger the safety of foreign lives and property.

Perhaps the most interesting and important aspect of this problem of protection and neutrality is the procedure carefully built up over a period of years and accepted as customary by foreigners and Chinese alike. When the naval commanders were appealed to for aid in 1853 they were of the opinion that they could not land troops for the protection of the settlements on their own authority but that they could assist if requested by the community through the foreign consuls. It was the British Consul,

Mr. Alcock, who stated succinctly the doctrine that every community has the right to take any steps necessary for its preservation. As a corollary to this he added that he might call upon the naval forces for aid without infringing the treaties. In defending this policy Consul Alcock stated that the permanent occupation of the foreign areas by the armed forces of the three Treaty Powers was open to serious objection. He contended that the consuls had no power to give legality to such a step, because Great Britain, the United States, and France had not undertaken by treaty to protect their subjects on shore in Chinese territory nor could they legally do so without the assent of the Chinese government. He continued:

At the same time, the duty of self-preservation being one of the first laws of nature, and, in the last resort over-ruling all others, what the naval commanders could not do, the community on the spot might very legally and justifiably do for themselves . . . . and if in danger of being over-powered in the act of resisting aggression, or in immediate anticipation of such danger, they as a municipality, could call in the assistance of any, and of every one of the naval or military forces, *posse comitatus*, and these so called might legally aid and assist, with or without arms in their hands.<sup>19</sup>

This has continued to be the basis upon which foreign forces are called in to defend the settlements. To make clear their position during the 1932 affair, the Municipal Council issued a statement on the neutrality of the International Settlement. After attempting to distinguish between a "neutralized state" and a "neutral state," the statement continued:

<sup>19</sup> Quoted in Feetham Report, *op. cit.*, Vol. I, p. 39.

The foreign community of the Settlement from the early days of its existence has claimed, under the law of "self-preservation" the right to protect itself against dangers of attack from without, as well as against disorder within its borders and has always maintained an attitude of armed neutrality in Chinese civil wars in the course of which the political and territorial integrity of the Settlement have been placed in jeopardy.

On various occasions when the local military and police forces of the Settlement have not been adequate to protect it against military or mob aggression on the part of any Chinese political or military party or faction, it has requested and secured the aid of the naval and military forces of certain Foreign Powers.

Ostensibly the landing in the Settlement of the naval and military forces of some of the Foreign Powers has been for the purpose of protecting the lives and property of their respective nationals. In practice, however, it has been found that the protection of their respective nationals could best be accomplished by concerted or combined action of the various foreign forces under a prearranged scheme or plan of defense embracing the whole Settlement, and under a unified direction likewise arranged by the consent of the various commanding officers of national units.

Under these circumstances it can hardly be denied that certain Foreign Powers at least, by convention have created and maintained a condition of neutrality of the International Settlement as against any acts of force or aggrandizement on the part of the Chinese government, political group or faction, tending to destroy or impair the political or territorial integrity of the Settlement. Whether this condition of neutrality extends beyond this may be a moot question.<sup>20</sup>

The statement goes on to point out that the Municipal Council has no authority or control over the foreign forces which are responsible only to their respective governments. Thus the whole procedure of giving effect to the policy of Settlement protection and Settlement neutrality is compli-

<sup>20</sup> Shanghai Municipal Council, *Annual Report*, 1932, p. 29.

cated by the number of separate authorities who are responsible to their respective groups or governments. The original theory was that the community should request aid from the commanders of the naval or military forces stationed at Shanghai. The community first acted through their consular representatives, then, after 1854, through the Municipal Council. The Council, however, could not ask the commanders for aid directly, and so sent the request through the Consular Body. Such requests were transmitted by the Senior Consul to the respective naval or military commanders. Thus the Municipal Council, the Consular Body, and the various naval and military commanders exercised a divided responsibility. None of these authorities had any legal relationship, nor could they direct each other. The whole procedure was regulated by custom.

With the development of the Shanghai Volunteer Corps there was an obvious need for some sort of co-ordination among these armed forces if the settlements were to be protected adequately. To that end there developed the practice of informal conferences among the various commanders of armed forces stationed in Shanghai and the commander of the Shanghai Volunteer Corps, as a result of which a general scheme was drawn up for the allocation of the various forces in the defense of the Settlement and the Concession.

The chief difficulty with this arrangement has been that, while the Council controls the police and the Volunteer Corps, it can exercise no control over the foreign troops, who do not have to adhere to any defense plan unless they wish and may exceed the scope of the plan by indulging in offensive operations outside Settlement boundaries.

## ESTABLISHMENT OF MARTIAL LAW

In addition to the foregoing procedure, the Council of the International Settlement, acting for the safety and good order of the Settlement internally, adopted the practice of issuing proclamations in time of emergency which have the effect of placing the Settlement under martial law. These proclamations are called "Declarations of a State of Emergency."<sup>21</sup> Under such a proclamation the Volunteer Corps and the police are mobilized for emergency duty, while curfew hours are established and no persons may appear on the streets between certain hours without an official pass; the ordinary rights of assembly and free speech, at no time guaranteed by the organic law, are definitely abridged; and the press is controlled. In short, the Council takes any measures believed necessary for the preservation of order and peace within the Settlement. Under this power for purposes of defense the boundaries of the Settlement are enclosed by barbed-wire entanglements and all the principal roads are barred by steel gates. While refugees are generally allowed to come into the Settlement they have at times been excluded.

The power under which these emergency measures are exercised is derived from the general grant in the Land Regulations which establishes a Council for the good order and safety of the Settlement and from the so-called right of self-preservation, often referred to as the "police power." The complete control which the French Consul-General exercises over the French Concession allows him

<sup>21</sup> Similar proclamations are issued by the authorities of the French Concession.

to take any measures he deems necessary for the protection of his area and as a member of the Consular Body he participates in all discussions which that body may have on the question of neutrality and protection.

Throughout the many civil wars that have occurred in China during the last three-quarters of a century, and in international wars prior to 1932, the operation of the policy of neutrality in Shanghai has been sufficient to prevent any large loss of life or property within the foreign settlements. The neutral policies pursued have been supported by the forces provided by the Treaty Powers, principally Great Britain, France, the United States, and Japan. Yet no definite legal basis exists for this policy. The foreign powers have no treaty rights which permit them to land troops in the foreign areas. The methods adopted for carrying into effect this policy have only the sanction of custom.

The means used to preserve the neutrality of the foreign settlements have included the establishment of a neutral zone around these areas, the exclusion of armed Chinese forces from the urban area and the disarming of these forces if allowed to enter the settlements, and the establishment of martial law in the International Settlement and the French Concession in times of emergency.

The defense of the settlements and the maintenance of a neutral policy have been based on the co-operative efforts of the principal Treaty Powers in providing adequate defense forces and in adherence to a common plan of defense. The possibility that one of the Treaty Powers might engage in hostilities with the Chinese while also

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co-operating in the protection of the foreign settlements had apparently never been considered. This actually occurred, however, in 1932, and because of its importance the Japanese invasion of Shanghai will be considered in detail. The problem of the protection and the neutrality of the foreign settlements must be reconsidered in the light of this development, wholly unprecedented in the history of these areas.

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## CHAPTER XIII

### THE JAPANESE INVASION OF SHANGHAI

**T**HE POLICY of protection, so carefully nurtured on an international basis during the years preceding 1931, was predicated upon the theory that the greatest threat to the safety of the foreign settlements would come from the Chinese. Foreign troops had been landed many times in these areas to defend them from Chinese armies engaged in civil war. The neutrality policy meant essentially the neutrality of the foreign settlements during civil conflict in China, a neutrality supported by force. While it was true, as has been stated, that the neutrality of the settlements in international conflicts had been accepted, that neutrality had broken down in the World War as soon as China became one of the belligerents. What would happen to this policy in modern warfare between China and a Great Power with Shanghai as the scene of hostilities had apparently never been considered. Since the whole policy of safeguarding the foreign areas had no legal or treaty basis, the usual Shanghai attitude prevailed of not borrowing trouble but drifting along until confronted with circumstances which had to be dealt with. When that time came the invariable rule of expediency was followed. Such was the situation in 1931 when a train of events started the Japanese military machine on its career of conquest on the Asiatic continent.

In connection with the conquest of Manchuria, there

occurred in Shanghai a unique military action, wholly unprecedented in the history of the city. Its legal and military aspects have been the subject of much controversy. The propaganda of both sides and the inaccurate statements of observers have served to cloud the issue and confuse the results. What happened in the first five months of 1932 in Shanghai constituted a turning point in the history of the foreign settlements. The Japanese invasion—for such it must be termed under any interpretation—affected the internal situation in the city and as part of the whole program of Japanese conquest marked an important development of Japanese influence in China. It is for these reasons that this affair must be treated in some detail in an attempt to present an accurate picture of its political complications and its most significant results.

#### DEFENSE OF THE FOREIGN SETTLEMENTS

Before presenting the circumstances which led the Japanese to throw an army of twenty thousand men into the Shanghai area to “protect Japanese nationals and their interests,” it is necessary to emphasize again the organization developed for carrying out the policy of Settlement protection and neutrality in case of emergency. By custom, in time of emergency, the Municipal Council notified the Senior Consul as head of the Consular Body that, in its opinion, foreign lives and property in the International Settlement were in danger and requested the Senior Consul to call upon the commanders of the foreign forces in Shanghai for assistance. Theoretically, under international law, each nation had the more or less accepted

right to land forces to protect its own nationals and their property.<sup>1</sup> As explained in the previous chapter, there had for some time existed a general understanding that the foreign forces would co-operate in defending the Settlement and the French Concession. The French Consul-General, of course, was in a better position than the Municipal Council in being able to call for help, but since he was a member of the Consular Body co-operation between the authorities of both foreign areas was not difficult. Thus, there existed an informal agreement by which the foreign naval and military forces were severally assigned sectors of the foreign settlements to defend, the Volunteer Corps and the Municipal Police assuming the task of patrolling the settlements and maintaining internal order.

To carry out the defense plan, the Municipal Council had adopted the practice of declaring a state of emergency, the effect of which has been set forth in the previous chapter. The declaration of a state of emergency was also by custom the signal for the mobilization of the Volunteer Corps and the Municipal Police on an emergency basis. It must be noted, however, that according to previous practice this declaration did not necessarily imply the immediate mobilization of foreign troops. The Municipal Council might or might not decide that foreign troops were necessary for the defense of the Settlement. It might decide to request the aid of foreign troops prior to the declaration of a state of emergency, or it might decide that the Volunteer Corps and the police were sufficient to maintain order.

<sup>1</sup> See Henry L. Stimson, *The Far Eastern Crisis* (New York, 1936), pp. 112 ff.

The actual effect, then, of this declaration by the Municipal Council was the mobilization of the Volunteer Corps and the police and the effecting of rules of martial law for the Settlement. A request for the landing of foreign troops as a corollary to this declaration lay in the discretion of the Municipal Council.

As has been stated, an informal allotment of sectors for defense had been generally agreed upon by the commanders of the foreign forces. In October 1931, when events in Manchuria resulted in increased tension between Chinese and Japanese in Shanghai, there was formed a Defense Committee consisting of the officers commanding the American, British, French, Italian, and Japanese forces in Shanghai, together with the Chairman of the Municipal Council, the Commander of the Volunteer Corps, and the Commissioner of Police. This committee was formed to

arrange for coordinated action by and cooperation between the foreign Garrison Commanders and between them and the municipal forces for common defense and for that purpose to divide the International Settlement and *its vicinity* [italics mine] into sectors the commanders of which should be responsible for assisting the police to maintain law and order for the protection of lives and property within the limits of their respective sectors.<sup>2</sup>

This Committee was merely an informal organization, with its purpose clearly stated but having no authority whatever over the foreign forces, who were under the control of their respective commanders, or over the Volunteer Corps and the Municipal Police, who were under the control of the Municipal Council.

<sup>2</sup> Shanghai Municipal Council, *Annual Report*, 1932, p. 18.

There were thus six aggregations of armed forces which might be called upon for the defense of the Settlement; but each one acted under a different authority, and the Defense Committee could secure only voluntary agreement for their plan of defense of the foreign settlements and had no assurance that this plan would be carried out under all circumstances. In addition, neither the Municipal Council nor the Consular Body had any authority whatever to insure that the foreign forces were to be used for the defense of the Settlement only and not for offensive operations into Chinese territory. As has been reiterated so often, the plan of defense did not presuppose hostilities between one of the defending powers and the Chinese; it presupposed a collective, defensive action.

With the formation of the Defense Committee in 1931, a defense plan was drawn up and adopted by the Committee, and various national forces were assigned sectors for defense. The French Concession was to be wholly defended by French forces. The western area of the Settlement was assigned to the Italian, British, and American forces. The main business district extending to the northern boundary of the Settlement adjacent to the North Railway station and Chapei (a Chinese city district) was assigned to the Shanghai Volunteer Corps. The whole northeastern area known generally as Hongkew was assigned to Japanese forces, as it was there that practically all Japanese interests and residents are located.

Two things should be noted about the assignment of sectors. In the extreme western area, in what is known as the Western Outside Roads District, and north of Hongkew, in what is known as the Northern Outside





Roads District, the defense sectors encroached on Chinese territory beyond the Settlement boundaries.<sup>3</sup> The official defense map<sup>4</sup> shows these areas clearly. There was nothing unusual in this assignment, as the authorities had several times in the past assumed the right to include the municipally controlled outside roads in the area to be defended. This had been acquiesced in by the Chinese in the past, although the areas are clearly Chinese territory subject to Chinese municipal jurisdiction. It has been alleged, however, that the plan adopted in the fall of 1931 included a section of Chapei across the tracks of the Shanghai-Woosung Railway as a part of the Japanese sector, and it has been contended that the Japanese insisted on the inclusion of this area because of the residence of a number of Japanese within it. If such was the case, it was clearly against previous policy and would seem to be a clear violation of Chinese territory without justification, as there are no outside roads in Chapei owned by the Municipal Council. Furthermore, it would have been easy to evacuate the Japanese residents in case of trouble; and, in fact, it was stated in the Shanghai newspapers that these residents had actually fled to Hongkew before the hostilities commenced on January 29, 1932. Indeed, the Chinese authorities have stated that they were not even informed that the outside-roads section north of Hongkew was included in the Japanese sector.<sup>5</sup> The question is important only in fixing blame or responsibility for the

<sup>3</sup> See defense map opposite.

<sup>4</sup> Map reproduced in Shanghai Municipal Council, *Annual Report*, 1932, p. 18.

<sup>5</sup> Statements made by Chinese city officials in interviews in 1934.

Japanese attack on Chapei. This, then, was the situation with respect to measures for the defense of the International Settlement and the French Concession prior to the actual operation of the plan in January 1932.

#### INCIDENTS LEADING UP TO HOSTILITIES

The events which led to the hostilities in the spring of 1932 can now be fairly well understood. As early as April 1931 there were indications of a growing tension between the Chinese and the Japanese over the long-standing problems and controversies in Manchuria. In addition, the internal situation in China had grown worse. A widening breach was evident between the Canton group in the Kuomintang and the group led by Chiang Kai-shek. A conference in Canton in May had threatened war unless Chiang Kai-shek resigned, and such war seemed imminent.

〔Then, in July, there occurred the so-called "Wampao-shan incident," which involved a dispute between Chinese and Japanese-supported Koreans in Manchuria, with feeling running high against Chinese in Korea. As a result, a boycott against the Japanese was started in Shanghai, supported particularly by student and labor groups. Other incidents occurred in Tsingtao and Manchuria which served to intensify the friction.〕 After the Japanese attack at Mukden in September, five hundred Japanese marines were sent into Hongkew in the International Settlement and tanks patrolled the streets to guard against disorder. Anti-Japanese meetings were held, and there was formed on September 27 an "Anti-Japanese and National Salvation Association," which inaugurated one

of the severest boycotts in China's history. By September 30, Shanghai newspapers announced that complete severance of economic and trade relations with Japan and the Japanese was already virtually effective in Shanghai.<sup>6</sup> This rigid boycott intensified the existing ill feeling on both sides. In spite of assurances from the Chinese Mayor of Greater Shanghai that he would do everything he could to break the boycott and would protect Japanese lives and property under his jurisdiction, many Japanese felt that the Nationalist government was secretly supporting the boycott. There were rumors that the Japanese intended to occupy Chapei and Nantao, important sections of the Chinese city. These rumors, although denied by Japanese officials, persisted and made any sort of settlement more difficult. Nevertheless the boycott was maintained, Japanese mills and business houses were forced to close their doors, and Japanese residents found considerable difficulty in obtaining food and other supplies. In spite of careful policing, in both the International Settlement and the Chinese city, demonstrations by Chinese and Japanese groups continued.

While Japanese protests against the boycott proved ineffective, dissension within the Chinese government finally resulted in the resignation of Chiang Kai-shek at the close of the year, and Dr. Sun Fo, son of Sun Yat-sen and a member of the Canton group, assumed the leadership of the national government. This maneuver resulted in the resignation of the Mayor of Greater Shanghai and the replacement of local troops by units of the Nineteenth

<sup>6</sup> Statements in *North China Daily News*, the *China Press*, and the *Shanghai Times*, from September 20 to October 1, 1931.

Route Army brought up from the south to maintain order in the Shanghai area and along the Shanghai-Nanking railway.<sup>7</sup> Immediately rumors were circulated that this army was going to attack the foreign settlements. No evidence has been found to substantiate these rumors, but they are important because they were believed by many of the foreign community, who apparently felt that it would not be such a bad thing for the Japanese to drive out the Nineteenth Route Army and thus further preserve the safety and sanctity of the foreign settlements.<sup>8</sup> There also existed the misapprehension that Japanese action in Shanghai would be taken in accordance with previous custom, which demanded that any action by a single nation should be taken to preserve the rights of all foreigners. Later events clearly demonstrated that the Japanese were acting in their own interests with little regard for the rights of other foreigners or of the foreign administration of the International Settlement.

In December and the early part of January increasing demonstrations indicated a fast-approaching crisis unless decisive action were taken to head it off. Such action was not taken. On January 18 a party of Japanese, including some Japanese monks, were set upon by Chinese in the eastern district outside the International Settlement and the fight resulted in the death of one of the monks. The

<sup>7</sup> See discussion of Shanghai and Woosung Garrison troops above, in chapter v, p. 120.

<sup>8</sup> Statements were made to the writer that evidence of the intention of the Nineteenth Route Army to attack the foreign settlements exists; no such evidence was found. The officers of the army may have thought that rumors of their attacking the foreign settlements would enable them to obtain funds to pay for their departure from Shanghai.

next night a large party of Japanese attacked and set fire to the San Yue Towel Factory in reprisal, since they claimed that some of the workers of this factory had been involved in the previous night's riot. In this attack three Chinese constables of the Settlement police force were assaulted.<sup>9</sup>

By this time feeling between Chinese and Japanese in Shanghai had gone beyond the control of their officials. The Japanese Consul-General, Mr. Murai, expressed regret for the attack on the towel factory and promised that the guilty would be punished. Japanese residents held a mass meeting in protest against the anti-Japanese campaign and against the weak and passive policy of their Consul-General. The same day the Japanese Consul-General made the following demands on the Mayor of Greater Shanghai:

1. A formal apology by the Mayor, in respect to the incident of January 18.
2. The immediate arrest of the assailants, involved in the incident.
3. Payment of solatium and hospital bills of the injured.
4. Immediate dissolution of all anti-Japanese organizations engaged in fostering hostile feelings and anti-Japanese riots and agitations.

<sup>9</sup> Documentary sources for a description of the Sino-Japanese hostilities are: Reports of the Special League of Nations Committee, composed of foreign officials in Shanghai with Count Ciano as chairman, published by Great Britain, *Accounts and Papers*, 1931-1932, Vol. XIV, Cmd. 4021, 4040, 4077; and Shanghai Municipal Council, *Annual Report*, 1932. J. Shinobu, *International Law and the Shanghai Conflict* (Tokyo, 1933), presents some interesting points on the Japanese side of the case.

The Mayor's reply delivered on January 21 was considered unsatisfactory. By January 24, Japanese re-enforcements had arrived and Mr. Murai had informed the Chinese Mayor he would expect a more satisfactory reply by January 28; and, backed by the Admiral in charge of Japanese naval units, he stated that if the reply should not prove satisfactory the Japanese would reserve the right to take any action they might find necessary to protect the lives and property of their citizens. This, in plain language, was a threat to use force.

The period from January 24 until the opening of hostilities on January 29 was complicated by numerous events and the actions of many official and unofficial groups, but the trend clearly indicated a determination on the part of the Japanese military and naval officers to use force in gaining an acceptance of their demands.

The Nineteenth Route Army, originally brought north in support of the Canton group, had the task of assisting Chinese police forces in Chinese territory adjacent to the Settlement. A second shift in the national government on January 26, the return of Chiang Kai-shek, and the resignation of Sun Fo placed this army in an embarrassing dilemma. No longer wanted in the Shanghai area, they had received their orders to leave, and the exodus of some units had actually begun on January 28. Though, as has been stated, they were charged with the intention of attacking the settlements, this cannot be proved. The officers might have been willing to use such a threat to gain badly needed funds, but their scrupulous regard for the neutrality of the International Settlement rather lends support to the idea that these rumors were wishful think-

ing on the part of those who supported the Japanese and who wished to maintain foreign rights at all costs.

The Mayor of Greater Shanghai, General Wu Tchen, and the Secretary-General, Mr. O. K. Yui, were placed in a most difficult position by the Japanese demands. Anti-Japanese demonstrations among the students and laborers had been partially responsible for the resignation of the Mayor's predecessor. The Mayor and his Secretary knew that if they accepted the Japanese demands in full, which included the breaking up of the boycott societies, there would undoubtedly be serious disturbances and Japanese lives and property might be further endangered. They had good reason to suppose that in such an event the Japanese would land naval units, which might decide to operate in Chinese territory. On the other hand, they had the direct threat of forceful action if the demands were not accepted. Therefore, from the point of view of these Chinese officials, the presence of the Nineteenth Route Army and the threatened landing of additional Japanese forces augured hostilities.

The Japanese Consul-General was handicapped in his attempts to evade trouble by the aggressive attitude of the Japanese residents, who demanded action and redress for the boycott, and by the fact that the ranking Japanese Naval Commander, Admiral Shiosawa, was apparently freer to act than was the Consul-General. When action was finally taken, these two Japanese authorities were not always in agreement. Admiral Shiosawa assured the chairman of the Municipal Council on January 26 that there was no intention on the part of the Japanese of trespassing on the neutrality of the Settlement or of interfer-

ing with the functions of the Municipal Council in its endeavor to maintain law and order in the Settlement. Later actions of the Japanese forces belied both these statements.

The Municipal Council was charged with the protection of the Settlement but did not have sufficient forces in the Volunteer Corps or police to maintain law and order and protect the boundaries in case of large-scale operations by the Chinese or Japanese or in the face of serious rioting by the Chinese population. Yet the Council had no means of controlling the action of the armed forces of the various powers once they had been requested to defend the Settlement, and therefore could not prevent any one or all of these contingents from conducting offensive operations against the Chinese in Chinese territory if they chose. Specifically the Council was faced with the problem that, if the Japanese demands were accepted by the Chinese, trouble would result or, if rejected by the Chinese, trouble would result. The question was whether a state of emergency should be declared and a request made for the troops of the various powers, including the Japanese, to take up their defense positions in the Settlement. In this event Japanese troops would move into Hongkew, where they would face the units of the Nineteenth Route Army; and few doubted that hostilities would follow. On the other hand, if no emergency measures were taken, there was the possibility of serious rioting and the landing of Japanese troops without adherence to a previous plan. In this case the police or even the Volunteer Corps might have extreme difficulty in preventing destruction of life and property. It appears in retrospect that any course taken by the

Municipal Council after January 24 was doomed to result in trouble of some kind. Little is accomplished by blaming the Council for the course which it took. Whether or not the hostilities could have been averted by decisive action of the Council before January 1932 is debatable, since it must not be forgotten that while the Council is the governing body for the Settlement it has no authority and not a great deal of influence in dealing with officials of the Chinese city or the Japanese authorities.

The Defense Committee formed in 1931 as an informal body to arrange for the disposition of foreign troops for the defense of the Settlement had already drawn up their plan. Their only task was to decide when the plan ought to become operative and to make such recommendation to the Council. Apparently they had little difficulty in making this decision when the fatal day arrived.

With this brief analysis of the interests of the various groups and authorities concerned in the affair, a chronological account of the events of January 27, 28, and 29 leading up to the actual outbreak of hostilities should be included. The sources for this narrative are the official reports of the Shanghai Municipal Council, of the League of Nations Committee formed in Shanghai to report "on the spot" (the so-called Ciano Committee), of the Lytton Commission, and also the official statements issued by the various governments concerned. It must be recognized that these official reports and statements are just as important for what they omit as for what they include. As has always been the case in Shanghai in times of emergency, negotiations must be carried on quickly and verbally—for the most part without written record. The

official statements issued are usually drawn up later for public consumption, and therefore cannot be taken as completely accurate. In the following description official reports have been supplemented by many interviews.

#### THE CRISIS

On January 26 Chinese authorities closed the headquarters of one of the anti-Japanese societies in the so-called "Temple of Heaven" in the International Settlement and anti-Japanese posters were removed from its walls.<sup>10</sup> On this same day the Defense Committee met to consider the general situation, and it was on the next day, the 27th, that the Committee met again and received assurances from the Japanese representative that he would give the Committee twenty-four hours' advance notice of any Japanese action.

At seven-thirty on the morning of January 28 notice was given that some sort of action would be taken by the Japanese within twenty-four hours. At nine-thirty the Defense Committee, in session considering the situation, decided to recommend to the Municipal Council the declaration of a State of Emergency and the moving of foreign troops to their pre-arranged positions according to the defense plan prepared in 1931. At noon the Council decided to accept the recommendation and to declare a State of Emergency to take effect at four o'clock that afternoon. The Chinese members of the Council appar-

<sup>10</sup> This building is owned by the Chinese government and is not under the jurisdiction of the Settlement authorities. In this sense it possesses "extraterritorial" rights within the International Settlement.

ently took no part in this proceeding, but the Chinese city officials were informed of the action and are supposed to have assented.

At 1:50 P.M. Consul-General Murai received a note from Mayor Wu Te-chen accepting the Japanese demands in full and promising to carry them out. At some time between that hour and four o'clock the Japanese Consul-General notified the Senior Consul that in view of the acceptance of the demands no action by the Japanese was contemplated to enforce them. At 4:00 P.M. units of the British, American, French, and Italian forces began moving into their assigned positions. The Japanese, however, did not move their troops into Hongkew as they were supposed to do under the defense plan. At 6:00 P.M. an officer of the Japanese naval landing party personally notified the Secretary-General of the Municipal Council that the Japanese Consul-General had received a satisfactory reply to the Japanese demands and that action to enforce them was not now necessary. But the State of Emergency had already gone into effect, and most of the foreign forces except the Japanese had occupied their positions by six o'clock. Rumors that the Japanese were going to occupy Chinese territory in addition to taking up their assigned position in Hongkew had led several units of the Nineteenth Route Army to throw up sandbags around the North Station during the evening, although some of these troops had actually begun to entrain for the South.

At 11:00 P.M. Admiral Shiosawa issued two proclamations, which were received by the Mayor of the Chinese city at 11:25. The first stated that the Japanese were ex-

tremely anxious about the situation in Chapei—Chinese territory across the tracks of the Shanghai-Woosung Railway and around the Shanghai North Station—and that they intended sending troops into that district to protect the lives and property of their citizens.<sup>11</sup> He further stated that he hoped the Chinese would speedily withdraw their own troops. The second proclamation stated that the Japanese forces would take any action necessary to carry out the State of Emergency in the district assigned to them.

At midnight Japanese marines began to take up posts at various points in Hongkew, and additional forces were landed from the naval units in the river. Fighting between the Chinese and Japanese forces broke out almost immediately as the Japanese proceeded into the northern outside-roads section close to the tracks of the railway. In addition, Chinese and Japanese gangsters and un-uniformed reservists engaged in sniping and shooting in Hongkew. In an attempt to stop this, the Japanese conducted an intensive search of houses, during which many Chinese lost their lives and much property was destroyed.

During the next two days it was clear that the Japanese were engaged in a struggle to oust the Chinese from Chapei, and the conflict quickly spread to include outlying sections as far as Woosung on the Yangtze. From that time on, until the Chinese withdrew their troops from Chapei and Woosung to a second line of defense and a

<sup>11</sup> The Chinese contend that this shows that Chapei was included within the Japanese defense sector, although it is clearly Chinese territory and no outside roads exist in the area.

truce was arranged, the hostilities had all the characteristics of war. The Japanese were engaged in offensive operations against the unexpected and stubborn resistance of the Nineteenth Route Army and the supporting divisions sent down from Nanking.

It is not necessary to go into the details of the campaign after January 30, except with reference to the actions of the various authorities in the three days immediately preceding the outbreak of hostilities and the status of the Settlement as so-called neutral territory. Several points stand out with respect to the operation of the State of Emergency, and several questions are to be asked concerning the course of events. Why did not the Municipal Council rescind the State of Emergency after they learned the Japanese demands had been accepted and they were assured by both consular and naval officials that no Japanese action was contemplated? There are several possible explanations. It has been suggested that the Council felt that the Japanese were going to land troops anyway and therefore wished to be prepared for whatever situation might result. This explanation as presented in the British White Paper sounds plausible. The Council was sure that trouble was going to occur, if not from the landing of Japanese troops, then from riots and demonstrations against the Chinese authorities for accepting the Japanese demands. Anyone can doubt the wisdom of the councillors in an emergency situation, but in retrospect it is hard to see how the Council could have acted differently. Yet the declaration of a state of emergency permitted the Japanese to occupy Hongkew and the outside-roads section and to press into Chapei on the grounds

that they were participating along with other powers in the defense of the Settlement.<sup>12</sup>

The Chinese authorities have stated—and no proof has been offered to the contrary—that they did not know the defense plan of 1931 contemplated the occupation of the Hongkew Park area outside the Settlement by the Japanese. Moreover, although the Japanese contended they were merely following the defense plan, brought into effect by the State of Emergency, they did not land their troops at 4:00 P.M. as provided, but waited until midnight, after giving the Chinese authorities but thirty-five minutes to get their troops out of Chapei. The inescapable conclusion is that the Japanese intended to occupy sections of Chinese territory in retaliation for the boycott and would probably have carried this out with little opposition and with the blessing of at least some of the foreigners had they not met with the unexpected resistance of the Nineteenth Route Army.

The official explanations are paradoxical: The Chinese authorities contended that they were defending Chinese territory. The Japanese authorities contended that they were defending the lives and property of their citizens. There seems to be some doubt as to whether the other foreign forces were defending the Settlement from the Chinese or from the Japanese. All parties insisted that they were on the defensive.

<sup>12</sup> The Japanese later insisted that they were forced to attack Chapei in order to dislodge Chinese troops who were firing into the Japanese defense sector. In the truce of May 5, 1932, a large demilitarized zone was established around Shanghai within which no Chinese troops are allowed.

## NEUTRALITY AND THE JAPANESE INVASION

The importance of these events, however, lies not in the politics surrounding their origin nor in the military moves of the opposing forces, but rather in the effect of the action on the status of the International Settlement, on the internal politics of Settlement administration, and on the policy of Settlement protection and Settlement neutrality.

It cannot be denied that the policy of neutrality failed to achieve its purpose. In the past it had served to prevent Chinese armies from entering the Settlement and to afford protection to life and property within the Settlement. In the months of January to May 1932, millions of dollars' worth of property were destroyed inside the International Settlement, and hundreds of persons resident in the Settlement were rendered homeless and other hundreds are known to have been killed or to have disappeared completely. The difficulty lay in the fact that the neutral policy was not designed to meet a situation such as that of 1932. That policy was wholly directed against the effects of Chinese civil wars or the possible difficulties of an international conflict in which Shanghai was outside the theater of hostilities. Apparently no effort had been made to adjust the neutral policy to this new situation, which certainly could have been foreseen as early as December 1931, if not before that time. As a result the policy broke down and the usual protection was not forthcoming.

For weeks the Municipal Council was unable to exercise any authority in the Hongkew district. Japanese military and naval units were in complete control. Many protests were filed against the use of the International Settlement

as a base for offensive operations into Chinese territory. These protests were ineffective. The Municipal Council carefully stated its position and fully admitted its inability to prevent the Japanese forces from operating as they pleased and when they pleased. Only gradually was order restored and the Municipal authorities were once more able to operate in Hongkew.

First, the effect of this breakdown of the Settlement's neutrality has detracted from the tradition of the Settlement as a safety zone under international protection. There is no guaranty against future Chinese boycotts. There is no guaranty that what the Japanese have done once they may not do again. There is no guaranty that the foreign powers will take stronger preventive measures in the future than they did in 1932.

Since 1932 the Japanese have strengthened their position in the Hongkew district to a considerable degree. Within a block of Hongkew Park in Chinese territory outside the Settlement boundary, although on a Municipal Council road, there stand today the barracks of the Japanese Naval Landing Party, the counterpart of the British "Shanghai Defense Force." These barracks, which are faced with granite and cover some two city blocks, are said to be capable of housing over two thousand troops. Tanks and armored cars are usually to be seen parked in front of this "fortress," constituting ample evidence that the Japanese government intends to "defend" the property and interests of its citizens in Shanghai.

During the hostilities of 1932 there was the constant danger that incidents might occur which would involve the armed forces of the other powers. Since 1932 nothing

has been done to prevent a recurrence of hostilities. No attempt has been made, so far as is known, to redefine the neutral policy to cover the possibility unlooked-for in that year. The same thing could happen again or the same action might be taken, and without an opposing Chinese army it might produce totally different results. To summarize, the policy of Settlement protection and Settlement neutrality so carefully built up over a period of seventy-five years has become wholly inefficacious as a result of the Japanese action in 1932. The safety of the Shanghai foreign settlements has been partially destroyed and to that extent their status has been modified.

Second, the effect of this Japanese action, which was carried on without effective protest from the British or other national groups in Shanghai, has been greatly to increase Japanese influence there. That the Japanese are playing a decisive part in Settlement affairs at present is beyond dispute. This has been demonstrated in the negotiations for the outside-roads question and in the increased Japanese appointments to administrative posts, all of which are discussed in detail elsewhere in this study.<sup>18</sup> In trade and investments, the Japanese stake in Shanghai is large and, what is more important, it is far greater proportionately than that of any other power.

During the hostilities of 1932 all sorts of stories floated around Shanghai to the effect that the Japanese were really aiming to take over a part of the city as an exclusive concession. The right to demand such a concession from China was included in the Supplementary Treaty of

<sup>18</sup> See above, chapters iii, x, and xi, pages 70-71, 224, 245-47.

1896.<sup>14</sup> Although certain suggestions were made as to a conference on Shanghai problems, nothing came of them, and so far as is known no demand for an exclusive concession has been made. Subsequent events have indicated that an exclusive concession is not necessary for the Japanese. In their control of the Hongkew district, where a large proportion of Japanese residents and property are located, the Japanese have all the advantage of an exclusive area without any of the disadvantages. That Japanese authority in Hongkew is exclusive is indicated by the fact that units of the Japanese naval landing party act as police, arresting and detaining Chinese and foreigners, interfering with the Municipal Police at will, and holding maneuvers freely in the streets at any hour they wish.<sup>15</sup> This control does not now exclude the activities of the municipal departments in Hongkew, but the Japanese do not hesitate to exercise their authority regardless of the dictates of the Municipal Council. The longer this situation continues the harder it will be for the Council to resist the demands of the Japanese. These demands, some of which have already been indicated, include full control of police in Hongkew. So far as is known the Japanese authorities have given no indication of desiring to assume the burden of public works, fire prevention, health, or education.

<sup>14</sup> See above, chapter x, note 11.

<sup>15</sup> During 1935, several incidents occurred in which Japanese Consular police and the marines of the Japanese naval landing party arrested and detained both foreigners and Chinese, disregarding the authority of the Municipal Police. In September 1936, after the killing of a Japanese marine, the Japanese naval landing party took complete control of Hongkew for nearly two weeks until the incident was settled.

These things they demand as a right from the Council as members of the international community.

The significance of this growing dominance of Japan in Shanghai extends beyond the city itself. According to the present trend Japan may surpass Great Britain in the Yangtze Valley trade and investments. But where the British were content to trade and maintain commerce on a basis of equality, the Japanese have given abundant indication that they aim to close the door to foreign competition. The last two years have witnessed an expansion of their influence in the north which has led to an acknowledged control of five northern Chinese provinces within the Great Wall. Yet the bulk of profitable trade continues to flow through Shanghai, not through Tientsin, and barring unforeseen opposition the extension of Japanese influence into the Yangtze Valley is almost a foregone conclusion.

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## CHAPTER XIV

### THE PROBLEM OF RENDITION

**S**AYS Dr. Hsia Ching-lin, in a study prepared for the Institute of Pacific Relations: "In a word, the government of the International Settlement is complex, anomalous, and indescribable."<sup>1</sup> This statement is just as applicable to the status of both of the foreign settlements. Since the opening of the port, lack of a definite and fixed status for these two areas, particularly the International Settlement, has produced most of the problems under discussion, or at the very least has served to complicate otherwise purely municipal affairs. Given a fixed treaty status, there would have arisen few of the questions of jurisdiction, rights, and obligations which have been so fertile a source of friction in the history of the two settlements. Because of its greater importance, many of these problems have more vitally concerned the International Settlement than the French Concession. Yet in any consideration of status or rendition what applies to one will equally apply to the other. It is extremely difficult to see how the status of one can be fundamentally altered without affecting the other, for although attention is usually centered on the International Settlement any plan for a change in its position would affect the French Concession and produce a similar change there. This has been the history of the two

<sup>1</sup> Hsia Ching-lin, *The Status of Shanghai* (Shanghai, 1928), p. 132.

areas, with respect to the Mixed Court, Chinese representation, and other questions.

Aside from the local importance of this question of the status and rendition of the two foreign areas, the problem has become international, in the sense that it is one of the problems that must be eventually dealt with as between China and the foreign powers. Although the Chinese Nationalist government actively demanded the complete rendition of all foreign concessions and settlements in China at one time, little is heard of such demands at present.

As with most of Shanghai's problems, the demands are the subject of diplomatic negotiation and may be settled eventually without much reference to the desires of the local authorities.<sup>2</sup> This has not prevented the local authorities from having their own ideas as to what the status of the foreign settlements should be, and no study of Shanghai is complete without an examination of the various proposals which have been made and some discussion as to their value.

#### CASES FOR AND AGAINST RENDITION

The British, French, and American treaties of 1842–1844, which gave the right to the nationals of these countries to reside in the open ports of Shanghai, Foochow,

<sup>2</sup> The local authorities have complained on several occasions of the negotiation of questions vital to Shanghai by the diplomats without consultation with local officials. See discussion on extraterritoriality negotiations in Lionel Curtis, *The Capital Question of China* (London, 1932), pp. 205 ff.

Ningpo, Amoy, and Canton, as has been previously stated, did not provide for the establishment of foreign-administered municipalities at these ports. The provision that the foreigners were to be allowed to live in an area set aside for their use, by the local Chinese officials and the Consul acting together, admits of varying interpretations and the fact that this provision was never clarified and made specific forms the basis for the indefinite status of the two areas at Shanghai today. This meant that the Consuls at Shanghai and the local Chinese authorities largely determined the early character of the settlements and that the two areas developed as circumstances dictated with no guiding principle except that of expediency. Thus when changes were desired and it was thought necessary to gain the assent of the central Chinese government at Peking, the regimes of the French and International areas at Shanghai were presented as a *fait accompli*. The Chinese government, too weak to do more than protest, had to accept, tacitly or otherwise, what it was powerless to prevent. A strong Chinese government might have insisted on a definite agreement concerning the position of these settlements, or it might have gradually eliminated them altogether; but there was no strong Chinese government. On the other hand, the foreign powers might have forced the Chinese government to accept a more definite status for these foreign areas at Shanghai, but the balance among the powers was too delicate, too many other problems interfered, and such an action would have called for too great a degree of co-operation.

This was the situation until after the World War, when China began to show signs of independence and the powers

began to indicate a willingness to consider giving up some of their privileges. The Chinese then began to demand rendition of the settlements, asserting the right of Chinese sovereignty. But after seventy years of development without definite rights upon which to build, with precedent piling upon precedent, the Chinese assertion of rights did not seem to fit the situation. Actually each side was just building a case. The Chinese asserted that sovereignty over the territory now included in the foreign settlements had never been relinquished and that proof lay in the payment of the annual ground rent by foreigners to the Chinese government. They also contended that the right of jurisdiction over Chinese in the Settlement had never been given up and had not lapsed through lack of exercise. They did not admit the right of the foreigners to establish a municipal government and contended that the Land Regulations had never been approved by the Chinese government.

The foreign case revolves around the failure of the Chinese government to provide protection for foreign residents and property, in the absence of which the community was asserted to have the right to take any measures it thought necessary for its own protection. These measures resulted in the establishment of foreign municipalities. The foreigners conceded China's sovereignty over the territory of the foreign areas but did not admit the right of jurisdiction by the Chinese government. These were the legal or official arguments. Actually the Chinese are divided on the question of rendition. Those who benefit from the Settlement regime are loth to give up these benefits. The foreigners also do not see that rendition would solve their problems, for they contend that the

Chinese have yet to demonstrate their ability to run a municipality on Western standards.

Aside from abstract arguments, however, foreign control of the two settlements in Shanghai has been actually contracting, not expanding, during the last twenty-five years. The admission of Chinese representatives to a share in the municipal governments, the rendition of the Mixed Courts and the establishment of purely Chinese courts in their stead, the levying of Chinese taxes on Chinese residents of the settlements by the municipal authorities for the benefit of the Chinese,<sup>3</sup> and the proposed factory regulations all indicate how gradually the Chinese are encroaching on the former exclusive control of these areas by foreigners. While it is true that each move has been strongly resisted by the foreign authorities, these authorities have been forced to give in and at the present time are dependent on the good will and the co-operation of the Chinese residents of their settlements. The growing agitation concerning the future of the settlements, the constant demand of the Chinese for a larger share in their administration, and the actual rendition of several national concessions in other parts of China have resulted in numerous proposals for a change in the status of the foreign areas at Shanghai, particularly that of the International Settlement.

#### PLANS FOR A FREE CITY

The commonest suggestion with respect to Shanghai and the one designed to preserve the benefits of foreign

<sup>3</sup> That is, the Rolled Tobacco Tax and certain stamp taxes.

rule and to prevent Chinese control is the so-called "free city" plan proposed at various times in the past. This involves turning the Shanghai area into a huge free port under the guaranty of the foreign powers. Such a plan was first presented in 1853-1854 in connection with the difficulties of collecting the customs which finally resulted in the establishment of the foreign-administered Chinese Imperial Maritime Customs Service. This first proposal was objected to by British and American authorities as being antipathetic to the treaties. In August 1862 the Defense Committee made the following recommendation :

The plan of a free city under the protectorate of the four great powers whose interests bring them into close connection with this country, but exercising its own government through its own chosen officers, elected under a system of suffrage, that shall give the controlling power to the owners of property, Chinese and foreign, is that which is perhaps consonant with public sentiment. A strong government would thus be formed, incorporating the city, its suburbs, and the tract of country immediately surrounding it into one, and a revenue be raised and an authority exercised which would ensure order and safety and make this the chief city of the empire.<sup>4</sup>

The British Consul pointed out that such a plan could be carried into effect only with the approval of the Chinese authorities and that such approval was impossible to obtain. Similar proposals were made in 1900 and in 1911, but came to nothing. It is not surprising that the foreign powers and the Chinese government could not come to an agreement for a greater Shanghai completely severed from China when so much difficulty was encountered in decid-

<sup>4</sup> *North China Herald*, August 7, 1862.

ing relatively easier questions. However, as late as 1932 there were rumors that the Japanese had suggested the possibility of creating a neutral zone around the city guaranteed by the powers. This was to be discussed at a round-table conference on Shanghai problems, but such a conference has never been held.<sup>5</sup>

#### PROPOSALS FOR A CHARTER PLAN OF CITY GOVERNMENT

When the Chinese Nationalist government demanded the abolition of extraterritoriality and the rendition of all foreign concessions and settlements, foreigners in Shanghai began seriously to consider the question of the future of the Shanghai foreign settlements. Many felt that unless something was done these settlements might some day share the fate of the British Concession at Hankow, which was taken over by the Chinese in 1927. Chinese of moderate views also discussed the possibility of developing a plan by which the rendition of the foreign areas in Shanghai might be accomplished with a minimum of friction. Several plans were produced having as their central idea the continuance of the settlements for a period by a direct grant or charter from the Chinese national government, thus giving the settlements a fixed legal basis.

At the 1927 meeting of the Institute of Pacific Relations, a plan was presented by M. J. Bau which probably

<sup>5</sup> See the *New York Times*, February 29, March 1, 13, 14, 21, 28, 1932. These proposals apparently failed because the Japanese wished to exclude the Chinese from the conference and because the foreign powers apparently did not wish to become involved in a discussion of the Shanghai problem at that time.

represented the moderate Chinese opinion on the subject. This plan provided:

(1) The Chinese residing within the limits of the International Settlement of Shanghai, with the requisite qualifications of ratepayers and councillors, similar to those of the foreign, shall be given all the rights of enfranchisement. (2) The Chinese shall have the right to lease, or own or acquire land in any form in the International Settlement under the same conditions as foreigners. (3) That the membership of the Council shall be expanded from nine to twenty-one, elected as before, annually; eleven to be elected by the Chinese ratepayers and ten by the foreign ratepayers; but one foreign member shall retire annually and a Chinese take his place, until at the end of ten years the whole membership shall be elected by the qualified ratepayers. The twenty-one elected members shall elect six more out of the other qualified ratepayers to make a total of twenty-seven, the proportion of the Chinese and foreign co-opted members being similar in each case, to the ratio of nationalities of the members of the Council. (4) A Mayor shall be elected by the first elected twenty-one members of the Council who shall hold office for a year but who shall be eligible for re-election and who shall devote his whole time during the tenure of his office to the administration of the municipality, and receive a compensation determined by the Council and approved by the ratepayers, but which shall not be increased or reduced during tenure of office. (5) The police shall be reorganized so as to include a Chinese chief superintendent and other Chinese inspectors, and also to bring about a gradual naturalization of the force. (6) The Chinese government shall have full authority to exercise rights of sovereignty within the International Settlement of Shanghai, consistent with the terms of the grant of municipal home-rule. (7) No amendment of land regulations or municipal charter shall be made without the express consent of the Chinese government. (8) By-laws made in pursuance of land regulations or municipal charter, in conflict with provincial or national laws, shall be invalid, through repeal by provincial legislature or judicial review by competent courts. (9) Chinese special areas, Nantao, Chapei, Kinngwan, and Woosung

shall be amalgamated with the International Settlement and French Concession of Shanghai into one municipality under a charter of municipal home-rule as heretofore described.

Dr. Bau concluded, "Thus the scheme aims to make the city government of Shanghai a great cornerstone of Chinese democracy and home rule."<sup>6</sup> The result of the adoption of such a scheme would have been to place the whole urban area under a Chinese administration with some foreign representation. Many foreigners doubted whether the Chinese residents of Shanghai were prepared to exercise the privileges of home rule or were willing to assume the responsibilities of such a democratic system. The plan represents an attempt to apply certain standards of Western municipal government to Shanghai in accordance with the conceptions of a group of Western-educated Chinese.

The 1929 meeting of the Institute of Pacific Relations also had before it a not dissimilar plan prepared by Dr. Hsia Ching-lin as a part of a study of the status of the foreign areas.<sup>7</sup> The scheme of Dr. Hsia may be summarized as follows: The future government of the Settlement and eventually of Greater Shanghai should be modeled after the present form. There should be a larger Council with increasing participation by the Chinese so that within ten years the Settlement government would be open to Chinese and foreigners alike. A permanent charter should be granted by the Chinese government, and amalgamation of the International Settlement, the French

<sup>6</sup> Institute of Pacific Relations Proceedings, published as *Problems of the Pacific* (Chicago, 1927), pp. 263-64.

<sup>7</sup> Hsia, *op. cit.*, pp. 154-55 ff.

Concession, and the Chinese city should be provided for within ten or fifteen years. This plan, like Dr. Bau's, would mean essentially the development of a Chinese municipal administration in the foreign areas.

The situation in 1929 was somewhat disturbing to those foreigners who had prospered under Settlement security but saw evidence of a stronger Chinese government under the Kuomintang. The rendition of national concessions begun by Great Britain, and the rendition of the Mixed Courts in Shanghai seemed the beginning of a tide which would sweep away foreign privileges. Because of this, unofficial suggestions as to a change in the status of the foreign areas did not go unheeded.

#### THE REPORT OF JUDGE FEETHAM

As a result of suggestions made at the meeting of the Institute of Pacific Relations the Shanghai Municipal Council invited the Honorable Mr. Justice Richard C. Feetham of the South African Supreme Court to come to Shanghai, make a thorough study of the problem of the status of the International Settlement, and propose a course for the future. Undoubtedly one factor which influenced this decision was the fear on the part of the Council that the diplomats would negotiate a settlement of the whole Shanghai problem without regard to local desires. This fear was engendered by the rumor that negotiations were taking place on the question of extraterritoriality, a subject closely related to the status of the Settlement.

Judge Feetham was to advise the Council "with a view to assisting them in formulating some constructive plan

or scheme which, while giving full consideration to the aspirations of the Chinese people, will at the same time afford reasonably adequate protection to the great commercial and business interests which have developed in Shanghai.”<sup>8</sup> His report was published during 1931 and 1932 in four volumes. The first contains a brief historical description of the International Settlement and of the Land Regulations. The statements of business groups in the Settlement are reprinted and some general conclusions from them are drawn. Volume II deals with the problem of rendition and includes Judge Feetham’s plan for the International Settlement pending rendition. Volume III sets forth a solution of the outside-roads question (referred to above, in chapter x, p. 222). The final volume contains brief additional suggestions.

The keynote of Judge Feetham’s plan for the future of the International Settlement is the development of “a genuine system of international partnership in the common interests of China and of the different foreign nations represented in the Settlement.”<sup>9</sup> As a basis for this partnership Judge Feetham states what he considers to be the points of agreement between the foreign and Chinese authorities as follows:

(1) That the present regime under the land regulations is not to be regarded as permanent, and that the time will come for rendition of the Settlement when certain conditions have been fulfilled.

(2) That when the time has come for rendition, there should be substituted for the regime under the land regulations, a new

<sup>8</sup> Feetham Report, *op. cit.*, Vol. I, p. 2.

<sup>9</sup> *Ibid.*, Vol. II, p. 152.

regime, to be established under a charter granted under the Nationalist government, conferring full rights of local self-government on the Settlement, on the basis of continued cooperation between foreigners and Chinese, either as a separate unit or as a part of the City of Greater Shanghai.

(3) That a transition period is necessary before rendition, followed by the establishment of a charter regime, can be regarded as a practical policy.

(4) That during this period the affairs of the Settlement should be conducted on the basis of close cooperation between the foreign and Chinese communities in the Settlement.<sup>10</sup>

Political control of local Chinese authorities by the Kuo-mintang and the national government plus the inexperience of the Chinese in Shanghai with local self-government and the possibility of civil disruption in China were the principal reasons given in the report for denying immediate rendition of the Settlement. It was concluded that a transition period would be necessary, a period of "decades, not of years."

The new plan for the Settlement was to be established by an international agreement negotiated by the Treaty Powers with the Chinese government. Such an agreement would be in effect both a charter for the new government and an international treaty obligation.

Judge Feetham recommended that the general form of Settlement government be retained because it had given the community self-government, security, and a "rule of law." He recommended increasing Chinese participation in the government through an enlarged Council. Chinese members were to become the largest single national group on the Council, but the foreigners were to retain an actual

<sup>10</sup> *Ibid.*, Vol. II, p. 118.

majority. The enlarged Council was to be made responsible to two bodies of ratepayers, foreign and Chinese, which could bind the Council to any action in which they both concurred.

The new agreement was to define more specifically the powers and duties of the Council and the electorate. By-laws could be made by the Council under this new plan but were to be subject to the veto of a new body composed of representatives of the Chinese government and the Shanghai Consular Body. A new court consisting of one Chinese and two foreign judges, to which the Council would be responsible at law and which would have the power of judicial review over provisions of the Land Regulations and By-laws, was to take the place of the Court of Consuls.

The possibility of the inclusion of the International Settlement in a single Shanghai municipality was termed undesirable:

Before the Settlement can for administrative purposes become a part of Greater Shanghai, and be subject to the control of one administrative area, time must be given for the development of a genuine system of local self-government in the Chinese area and for practical appreciation and application in that area of the rule of law.<sup>11</sup>

Judge Feetham stated in conclusion:

The proposals which I have now made provide that, in addition to Chinese members on the Council, there shall be (1) a meeting representative of Chinese ratepayers which shall stand on the same footing as the meeting of foreign ratepayers; (2) Chinese representation in the authority entrusted with the duty of confirming by-laws made by the Council; and (3) Chinese repre-

<sup>11</sup> Feetham Report, *op. cit.*, Vol. II, p. 138.

sentation in the Court to whose jurisdiction the Council is subject. Methods have been suggested also for broadening and strengthening the basis of partnership existing between the different foreign nations in respect to Settlement affairs. The developments proposed are thus in accordance with the principles of partnership already embodied in the constitution. If provisions on these lines are adopted, and are given a fair trial on the basis of willing cooperation by the partners concerned, it seems not unreasonable to hope that the Settlement system of government, which has a history in many ways remarkable, may be enabled to function successfully in the future in a more complete and consistent form, and while gradually adapting its methods and activities to meet the requirements of new conditions, may retain those distinctive features to which it has hitherto owed its special character and value.<sup>12</sup>

The Feetham Report has so far not been acted upon by the foreign powers. Judge Feetham's employment by the Municipal Council and his unfortunate statement that rendition of the International Settlement to China was a matter "of decades, not of years" did much to prevent Chinese acceptance of his plan. The results of the Sino-Japanese hostilities of 1932 and the present Japanese policy toward China have so changed the situation as to make the Feetham Report at present of little more than academic interest.

#### THE SUGGESTIONS OF MAYOR WU TE-CHEN

Finally, the suggestions made on several occasions by Mayor Wu Te-chen of the Municipality of Greater Shanghai are interesting. The ambitious plans for the development of the Chinese city have already been described.<sup>13</sup>

<sup>12</sup> *Ibid.*, Vol. II, p. 238.

<sup>13</sup> See above, chapter v, p. 124.

These plans envisage a metropolitan Shanghai with the business, industrial, and shipping activities located in Chinese territory north and east of the International Settlement. Mayor Wu has stated that these plans would make possible the unification of the whole urban area, with the International Settlement and the French Concession existing as boroughs in a greater Shanghai. The foreign areas would be allowed to retain their separate governments for a time under foreign control but with gradually increased Chinese participation until the final rendition of these areas to China. This plan has not been pressed and obviously cannot be insisted upon at the present time. It would necessitate a far greater degree of Sino-foreign co-operation, and particularly Sino-Japanese co-operation, than now appears possible. Nevertheless such a plan might conceivably form the basis of negotiations on the status of the foreign settlements, if and when such action seems possible.

It should be pointed out that the adoption of any one of the proposals outlined would probably raise as many problems as it would solve. Furthermore, most Chinese and foreign plans for a change in the status of the foreign settlements are dependent on the negotiation of new multilateral agreements. They do not take into account the difficulties of obtaining such agreements, nor do they consider sufficiently the inexperience of the Chinese with representative government.

In the past the principal obstacles to clarification of the status of the two foreign settlements have been (1) the inability of the Treaty Powers to reach an agreement among themselves, and (2) the growing antagonism

of the Chinese to any scheme short of rendition. Today more important developments in the Far East and in Europe have temporarily obscured the problem. The obstacle to complete rendition of the Shanghai settlements to China has been and continues to be the inability of the Chinese to force the issue in the face of internal difficulties and strong foreign objection. In view of the present Far Eastern situation the consideration or development of any proposals for a new form of government or for rendition of the settlements is probably dependent on the policy of Japan toward China and the attitude of the other foreign powers toward new Sino-Japanese developments.

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## CHAPTER XV

### THE FUTURE OF SHANGHAI

**L**OCATION and security are the two factors which have contributed most to the growth of the three municipalities comprising the modern city of Shanghai. With these advantages, Shanghai has become one of the world's largest ports and the economic capital of China.

For over seventy-five years the two foreign settlements have existed with an indefinite legal basis under rules and regulations long out of date. Precedent and custom have partially sanctioned their continued existence, but the protection accorded these areas by the forces of the foreign powers has been the most important factor in preserving their status and their freedom from Chinese control. The Chinese municipality, on the other hand, is of recent creation and today is struggling against the handicaps of little taxable wealth, political interference, and the difficulties of adapting a Westernized form of municipal government to the Chinese. It is obvious that as a separate municipality it cannot hope to compete successfully with the two foreign areas.

The relations of the foreign authorities and the Chinese have been complex, at times full of antagonism and at times co-operative when motivated by common interests. On all occasions the rule of expediency has been followed. The actions of both foreign and Chinese officials have been limited by the uncertainties of China's internal de-

velopment and by changes in Far Eastern international politics. The problems which have arisen in Shanghai since the port was opened to foreign trade have been complicated by the system of foreign rights and privileges, principally the right of extraterritoriality, continued in the absence of a strong, centralized Chinese government. Most of the problems dealt with in this study have been subject to long negotiations, locally and internationally, and have frequently become involved in the tangle of Sino-foreign politics. Most of these problems are as yet unsolved. While one or two of them have apparently been settled, the permanency of such settlements is still debatable.

Industrial and labor problems largely revolve around the question of industrial regulation, the future of organized labor, and a growing class-consciousness in Shanghai and other parts of China. The boundaries of the foreign areas have not been extended for twenty years, but the municipally owned roads outside these boundaries still provide a fertile source of Sino-foreign friction. The attempts at solution of the extra-Settlement roads question constitute a good example of the complexity of Shanghai's problems. Protracted negotiations have been interrupted by periods of Chinese antagonism to the foreigners, and recent working agreements have come near acceptance only to fail through the intervention of one of the foreign powers, Japan.

After years of struggle the Chinese finally won a partial victory for Chinese representation in the governments of the foreign settlements. In 1930 it seemed that this modification in foreign rule might produce a new period of Sino-

foreign co-operation, but the events of 1932 and the growing influence of the Japanese checked this possibility. Japanese demands for greater representation in the government of the International Settlement provide new complications yet to be dealt with. The protection of the foreign settlements and their neutrality in civil and international conflicts has been a stabilizing factor in the economic development of Shanghai. The safety of the lives and property of the foreign and Chinese population of the settlements has long been taken as a matter of course. The hostilities of 1932, however, broke down Shanghai's traditional neutrality and the resulting loss of life and property makes the future security of the foreign areas a debatable issue.

The various plans which have been proposed for a change in the status of the foreign settlement, short of rendition, have so far proved unacceptable. Chinese opposition to plans which would prolong foreign control, and foreign opposition to Chinese plans which would diminish foreign rights have so far prevented the acceptance of the "free city" proposals and the plans for a charter government, including that of Judge Feetham.

It has not been the purpose of this study to propose a solution of the Shanghai problem. It would be impossible, however, for anyone to undertake a serious study of this city and its problems without forming some opinions. This concluding discussion, then, is a series of observations, made with the realization that the many variable factors in Far Eastern politics may at any time render these observations worthless.

In the first place, the development of the International

Settlement and that of the French Concession has been closely interrelated and what applies to one area will in most cases apply to the other.

In the second place, the relation of the foreign settlements to the system of extraterritoriality is important. While it has been stated that both foreign settlements rest on a vague and indefinite treaty basis, their existence is largely dependent on treaty-guaranteed extraterritorial rights. It is this system which is largely responsible for preventing the Chinese government from enforcing Chinese law in the foreign settlements, and it is this system which has enabled the foreigners to extend their jurisdiction and control over the Chinese residents of these settlements.

The link between the status of the foreign areas and extraterritoriality, then, is very close, although it is not absolute. For example, it would be possible to abolish the foreign settlements without abolishing extraterritorial rights. If this could be done foreigners in Shanghai would live under the same conditions as foreigners in Nanking, where there are no foreign concessions or settlements. In other words, the foreign governments of the Shanghai settlements would disappear and the Chinese would govern the foreign areas, making local laws and collecting local taxes. While several national concessions in some of the smaller treaty ports have already reverted to Chinese control in this way, the importance of Shanghai is so great that it is hardly conceivable that the foreign powers would agree to a complete rendition of the Shanghai settlements unless they also were willing to agree to the abolition of extraterritoriality.

On the other hand, it is possible that the system of extraterritoriality might be abolished without the rendition of the Shanghai settlements. It would be impossible to do this, however, unless the settlements were given a fixed and definite status as foreign-controlled areas free from Chinese jurisdiction. It is conceivable that this might be agreed to by the foreign powers and the Chinese, but only as a prelude to complete rendition.

Having stated these possibilities, it would seem that the existence of the foreign settlements in Shanghai is so closely bound up with the system of extraterritoriality that the two problems must inevitably be considered together. Any attempt to solve the extraterritoriality question must take account of the Shanghai problem and vice versa.

Without suggesting a solution of the Shanghai problem it is possible to point out the methods which could be used to arrive at a solution. Historically, the whole problem has been attacked piecemeal. As each problem became acute the foreign and Chinese authorities began negotiations for a settlement of the question. In this way the problems of the Mixed Court, of Settlement extension, of Chinese representation, of industrial regulation, and many others have been only partially solved. Piecemeal settlement has involved many years of negotiations and has not yet resulted in any kind of a solution of the major problems of extra-Settlement roads and rendition. Obviously, this method is no substitute for an attempt to achieve a definitive solution of the Shanghai problem as a whole.

Another method, never applied to the Shanghai prob-

lem in its entirety, is that of international conference. This method was applied to certain other Far Eastern questions at the Washington Conference of 1921. It involves considerable diplomatic bargaining, and a settlement by this method would naturally reflect the position and the alignment of the interested powers.

Since many aspects of the Shanghai problem involve technical or legal questions of treaty rights and extraterritorial jurisdiction, the appointment of an international commission of experts is a third possible method of settlement. Such an international commission might be expected to overcome the objections of the Chinese to the employment of a single national expert such as Judge Feetham. However, the work of the Extraterritoriality Commission set up under the Washington treaties did not establish a good precedent for this method. The report of this Commission was delayed for six years, and when it finally appeared in 1927 conditions had so changed as to make its conservative proposals politically unacceptable.

There remains, finally, resort to the use of force as a means of solution. This might involve either the use of force by a strong Chinese government able to establish its full sovereignty in Shanghai or the use of force by a group of powers or a single power in gaining the acceptance of the Chinese government of a new plan for the status of Shanghai. The "free city" suggestions in 1854 and 1862 could have been effected only by this method, and the use of force was implied in the 1932 proposal of the Japanese government for a neutral zone around Shanghai.

The successful use of any one of these methods or any combination of them is dependent on a recognition of cer-

tain factors. The first of these is the interrelation of European and Far Eastern politics. In order to determine the possibility of a settlement for the Shanghai problem, at any given time, it is necessary to know not only the Far Eastern policy of the principal Treaty Powers but their relations to European problems and particularly their European alignments and commitments.

At the present time European problems have drawn the attention of the powers away from the Far East and momentarily have assumed for them a much greater importance than Oriental questions. In view of this development, more now depends on the intent and policy of the Japanese government toward China than upon anything else. The growing influence of the Japanese in Shanghai has been emphasized throughout this study. There is no doubt that Japan intends to pursue her course in China with little regard for the interests of the other Treaty Powers and to take full advantage of their occupation with European questions.

Prior to 1931 Japan was associated with the foreign powers in most Sino-foreign negotiations with China. Now such negotiations have assumed a triangular aspect, with China dealing separately with Japan and with the Western powers. With Japan on the move in China, and with Great Britain, France, Russia, and the United States seemingly unwilling to involve themselves further in the Far East, it must be re-emphasized that the future of the Shanghai problem rests with Japan. Shanghai's access to the wealth and trade of the Yangtze Valley is the stake involved—for China, for Japan, and for the Western powers.

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**HISTORICAL DEVELOPMENT OF THE INTERNATIONAL SETTLEMENT AND FRENCH CONCESSION**

**INTERNATIONAL SETTLEMENT**

**FRENCH CONCESSION**

**LEGEND:**

Area	Date
A	Sept. 20, 1846
B	Nov. 27, 1848
C	June 25, 1863
D	1899

A Sept. 20, 1848  
B Nov. 27, 1848  
C June 25, 1863  
D 1899

1. Apr. 6, 1849
2. Oct. 29, 1861
3. Jan. 27, 1900
4. July 20, 1914

